Clerk's Manual
1913

Hon. THOMAS H. BUSSEY

THE

CLERK'S MANUAL

OF

RULES, FORMS AND LAWS

FOR THE

REGULATION OF BUSINESS

IN THE

SENATE AND ASSEMBLY

OF THE

STATE OF NEW YORK

PUBLISHED PURSUANT TO SECTION 15 OF THE LEGISLATIVE LAW

PATRICK E. McCABE, *Clerk of the Senate*
FRED W. HAMMOND, *Clerk of the Assembly.*

ALBANY
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1913.

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INTRODUCTORY.

The CLERK'S MANUAL was first issued in 1855 by Hon. Richard U. Sherman, Clerk of the Assembly, and section 15 of the Legislative Law provides for its continuance from year to year.

Prior to 1889, in addition to the CLERK'S MANUAL, there has been published and used Croswell's Manual, originally compiled by Sherman B. Croswell, and revised from time to time, by L. B. Gleason, Journal Clerk of the Senate, the Appendix, thereto, originally compiled by E. B. Johnson, and revised by L. B. Gleason, and the Committee Clerk's Manual, compiled by Henry L. Gates, Journal Clerk of the Assembly. In 1899 all of these were revised by Henry L. Gates, Journal Clerk of the Assembly, and consolidated under the title of "Clerk's Manual." There was also included in the CLERK'S MANUAL the Constitution annotated, the Legislative Law and the State Printing Law. The many additional decisions subsequently rendered involving the construction and application of the provisions of the Constitution, the amendments made to the Legislative Law, and changes in and additions to the various forms included in the Committee Clerk's Manual, rendered a further revision of the CLERK'S MANUAL necessary, which was made in 1904 by Ray B. Smith,

then Assistant Clerk of the Assembly. It is sought in this work to include for ready reference, the Constitution, statutes, rules, forms, and a statement of procedure constantly used by members of the Legislature, in convenient form for ready reference. While it is impossible in a limited work of this character to include all of the statutory provisions, and to state in detail all of the procedure required in legislative work, nevertheless, it is believed that the CLERK'S MANUAL in this form will accomplish, in a fairly satisfactory manner, the primary object sought to be attained.

The annotations to the Constitution, the statutes, rules, forms and statement of procedure are those in force September 1, 1911. The annotations are brought down to and include Vol. 202, New York Reports, Vol. 144, Appellate Division Reports, and Vol. 67, Miscellaneous Reports.

PATRICK E. McCABE,
Clerk of the Senate.
FRED W. HAMMOND,
Clerk of the Assembly.

LIST OF MEMBERS

OF THE

Senate of the State of New York for the Year 1913.

WITH POLITICS, OCCUPATION AND POST-OFFICE ADDRESS OF EACH.

HON. MARTIN H. GLYNN, *Lieutenant-Governor and President of the Senate, Albany, N. Y., Home Post-office, 28 Willett St., Albany, N. Y.*

Dist.	NAMES.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
1.	Thomas H. O'Keefe	Democrat	Retired	Oyster Bay, N. Y.
2.	Bernard M. Patten	Democrat	Real estate	151 Elm st , L. I. City, N. Y.
3.	Thomas H. Cullen	Democrat	Marine insurance	135 William st., N. Y. City.
4.	Henry P. Velte	Democrat	Lawyer	265 Hewes st., Brooklyn.
5.	William J. Heffernan	Democrat	Retired	594 4th ave., Brooklyn.
6.	William B. Carswell	Democrat	Lawyer	121 St. Marks ave., B'lyn.
7.	Daniel J. Carroll	Democrat	Manufacturer	135 N. 3d st., Brooklyn.
8.	James F. Duhamel	Ind. Dem	Patent attorney	202 Bay 28th st., B'lyn.
9.	Felix J. Sanner	Democrat	Real estate	58 Breman st., Brooklyn.
10.	Herman H. Torborg	Democrat	Lawyer	1043 Liberty ave., B'lyn.
11.	Christopher D. Sullivan	Democrat	Real estate	51 Chambers st., N. Y. City.
12.	John C. Fitzgerald	Democrat	Cement business	175 Second ave., N. Y. City.
13.	James D. McClelland	Democrat	Lawyer	43 Barrow st., N. Y. City.
14.	James A. Foley	Democrat	Lawyer	261 Broadway, N. Y. City.
15.	John J. Boylan	Democrat	Real estate	402 W. 51st st., N. Y. City.
16.	Robert F. Wagner	Democrat	Lawyer	51 Chambers st., N. Y. City.
17.	Walter R. Herrick	Democrat	Lawyer	115 Broadway, N. Y. City.
18.	Henry W. Pollock	Democrat	Lawyer	541 W. 113th st., N. Y. City.
19.	Henry Salant	Progressive	Lawyer	113 W. 122nd st., N. Y. City.

SENATORS — (*Concluded*).

Dist.	NAMES.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
20.	James J. Frawley	Democrat	Contractor and builder.	51 E. 96th st., N. Y. City.
21.	Stephen J. Stilwell	Democrat	Lawyer	3311 Olinville ave., Williamsbridge, N. Y. City.
22.	Anthony J. Griffin	Democrat	Lawyer	891 Cauldwell ave., N. Y. City.
23.	George A. Blauvelt	Democrat	Lawyer	Monsey, N. Y.
24.	John F. Healy	Democrat	Manufacturer	New Rochelle, N. Y.
25.	John D. Stivers	Republican	Editor and publisher	Middletown, N. Y.
26.	Franklin D. Roosevelt	Democrat	Lawyer	Hyde Park, N. Y.
27.	Abraham J. Palmer	Prog and Republican	Fruit grower	Milton, N. Y.
28.	Henry M. Sage	Republican	Land and timber bus	Menands, N. Y.
29.	John W. McKnight	Democrat		Castleton, N. Y.
30.	George H. Whitney	Republican	Pharmacist	Mechanicville, N. Y.
31.	Loren H. White	Democrat	Insurance and furniture.	Delanson, N. Y.
32.	Seth G. Heacock	Republican	Oil producer	Ilion, N. Y.
33.	James A. Emerson	Republican	Banker	Warrensburgh, N. Y.
34.	Herbert P. Coats	Republican	Lawyer	Saranac Lake, N. Y.
35.	Elon R. Brown	Republican	Lawyer	Watertown, N. Y.
36.	William D. Peckham	Democrat	Physician	333½ Genesee st., Utica, N. Y.
37.	Ralph W. Thomas	Republican	Lawyer	Hamilton, N. Y.
38.	J. Henry Walters	Republican	Lawyer	935 University Building, Syracuse, N. Y.
39.	Clayton L. Wheeler	Democrat	Hardware and plumbing	Hancock, N. Y.
40.	Charles J. Hewitt	Republican	Coal and lumber	Locke, N. Y.
41.	John F. Murtaugh	Democrat	Lawyer	Elmira, N. Y.
42.	Thomas B. Wilson	Republican	Farmer and fruit grow'r	Hall, N. Y.

43. John Seeley	Democrat	Physician	Woodhull, N. Y.
44. Thomas H. Bussey	Republican	Manufacturer	Perry, N. Y.
45. George F. Argetsinger	Republican	Manufacturer	25 North Washington st., Rochester, N. Y.
46. William L. Ormrod	Republican	Agriculturist	Churchville, N. Y.
47. George F. Thompson	Republican	Lawyer	Middleport, N. Y.
48. John F. Malone	Democrat	Vice-pres. casualty co.	290 North st., Buffalo, N. Y.
49. Samuel J. Ramsperger	Democrat	Bookkeeper	232 Emslie st., Buffalo, N. Y.
50. Gottfried H. Wende	Democrat	Lawyer	2256 Bailey ave., Buffalo, N. Y.
51. Frank N. Godfrey	Republican	Farmer	Olean, N. Y.

Democrats	32
Republicans	16
Independent Democrat	1
Progressive Republican	1
Progressive	1
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Previous Service in the Legislature of Members of the Senate of 1913.

NAMES.	ASSEMBLY.	SENATE.
Argetsinger, George F.	.....	1911, 1912.
Blauvelt, George A.	1911, 1912.	
Boylan, John J.	1910, 1911, 1912.	
Brown, Elon R.	.....	1898, '99, 1900, '01, '02, '03, '04.
Bussey, Thomas H.	.....	1911, 1912.
Coates, Herbert P.	.....	1910, 1911, 1912.
Cullen, Thomas H.	1896, 1897, 1898.	1899, 1900, '01, '02, '03, '04, '05, '06, '07, '08, '09, '10, '11, '12.
Duhamel, James F.	... .	1911, 1912.
Emerson, James A.	.....	1907, '08, '09, '10, '11, '12.
Fitzgerald, John C.	1911.	1903, '04, '05, '06.
Foley, James A.	1907, '08, '09, '10, '11, '12.	1912, special election.
Frawley, James J.	.....	1903, '04, '05, '06, '07, '08, '09, '10, '11, '12.
Griffin, Anthony J.	.....	1911, 1912.
Heacock, Seth G.	.....	1907, '08, '09, '10, '11, '12.
Herrick, Walter R.	1911.	
Hewitt, Charles J.	1902, 1903, 1904.	1909, 1910, 1911, 1912.
McClelland, James D.	1882.	1911, 1912.
Murtaugh, John F.	.....	1911, 1912.
Ormrod, William L.	.....	1911, 1912.
Pollock, Henry W.	.....	1911, 1912.
Ramsperger, Samuel J.	.....	1899, 1900, '01, '02, '03, '04, '07, '08, '09, '10, '11, '12.
Roosevelt, Franklin D.	.....	1911, 1912.
Sage, Henry M.	1899.	1911, 1912.
Sanner, Felix J.	1909, 1910.	1911, 1912.
Seeley, John.	1911, 1912.	

Stilwell, Stephen J	.....	1909, 1910, 1911, 1912.
Stivers, John D	1910, 1911, 1912.	
Sullivan, Christopher D	.....	1907, '08, '09, '10, '11, '12.
Thomas, Ralph W	.....	1910, 1911, 1912.
Thompson, George F	1904, 1905.	
Torborg, Herman H	1899.	
Wagner, Robert F	1905, 1907, 1908	1909, 1910, 1911, 1912.
Walters, J. Henry	1908, 1909, 1910	1911, 1912.
Wende, Gottfried H	1909, 1910, 1911, 1912.	
Wheeler, Clayton L	1911, 1912.	
White, Loren H	1909, 1910	1911, 1912.
Whitney, George H	1903, '04, '05, '06, '07, '08, '09, '10, '12.	
Wilson, Thomas B	1910, 1911.	

LIST OF MEMBERS
OF THE
Assembly of the State of New York for Year 1913.

WITH THE POLITICS, OCCUPATION, RESIDENCE AND POST-OFFICE ADDRESS OF EACH.

Dist.	NAME.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
	ALBANY.			
1	Harold J. Hinman	Republican	Lawyer	357 Madison ave., Albany.
2	John G. Malone	Republican	Electrical contractor	8 Wendell st., Albany.
3	Wm. C. Baxter	Republican	Coal dealer	Watervliet.
	ALLEGANY.			
	Ransom L. Richardson	Republican	Lawyer	Fillmore.
	BROOME.			
	Mortimer B. Edwards	Republican	Lumber and farmer	Lisle.
	CATTARAUGUS.			
	Clare Willard	Democrat	Banker	Allegany.
	CAYUGA.			
	Michael Grace	Republican	Building contractor	Weedsport.
	CHAUTAUQUA.			
1	George W. Jude	Progressive	Lawyer	Jamestown.
2	John Leo Sullivan	Republican	Lawyer	Dunkirk.
	CHEMUNG.			
	Robert P. Bush	Democrat	Physician	Horseheads.

CHENANGO.			
Walter A. Shepardson	Republican	Retired farmer	Norwich.
CLINTON.			
Charles J. Vert	Republican	Lawyer	Plattsburgh.
COLUMBIA.			
Alexander W. Hover	Democrat	Farmer and merchant	Germantown.
CORTLAND.			
Niles Freeland Webb	Republican	Farmer	Cortland, R. F. D. 4.
DELAWARE.			
John W. Telford	Democrat	Physician	Margaretville.
DUTCHESS.			
1 Myron Smith	Republican	Coal and ice	Millbrook.
2 John Augustus Kelly	Democrat	Lawyer	328 Church st., Poughkeepsie.
ERIE.			
1 George Frederick Small	Democrat	Print cutter	42 10th st., Buffalo.
2 Clinton T. Horton	Republican	Attorney	905 D. B. Morgan Bldg., Buffalo.
3 Albert F. Geyer	Democrat	Lawyer	146 Grape st., Buffalo.
4 Edward D. Jackson	Democrat	Switchman	304 Smith st., Buffalo.
5 Richard F. Hearn	Democrat	Manager	434 N. Division st., Buffalo
6 James M. Rozan	Democrat	Real est. and ins.	496 Fillmore ave., Buffalo.
7 Joseph Vincent Fitzgerald	Democrat	Railroad clerk	Lancaster.
8 George Geoghan	Democrat	Sanitary engineer	321 E. Ferry st., Buffalo.
9 John Dorst, Jr	Democrat	Telegraph opr, real estate	Akron.
ESSEX.			
Spencer G. Prime, 2nd	Republican	Lawyer	Upper Jay.
FRANKLIN.			
Alexander Macdonald	Republican	Bank cashier	St. Regis Falls.

MEMBERS OF ASSEMBLY — (*Continued*).

Dist.	Name.	Politics.	Occupation.	Post-office Address.
	FULTON-HAMILTON.			
	James H. Wood	Republican	Lawyer	Gloversville.
	GENESEE.			
	Clarence Bryant	Republican	Treasurer	Le Roy.
	GREENE.			
	J. L. Patrie	Democrat	Attorney-at-law	Catskill.
	HERKIMER.			
	E. Bert Pullman	Democrat	Manufacturer	Fulton Chain.
	JEFFERSON.			
1	H. Edmund Machold	Republican	Farmer	Ellisburg.
2	John G. Jones	Republican	Chemical engineer	Carthage.
	KINGS.			
1	John Joseph Kelly	Democrat	Master horseshoer	135 Pacific st., B'klyn.
2	William J. Gillen	Democrat	Bookkeeper	12 Vanderbilt ave., B'klyn.
3	Frank J. Taylor	Democrat	Riveter	50 Van Dyke st., B'klyn.
4	Harry W. Kornobis	Democrat	Veterinarian	910 Bedford ave., B'klyn.
5	Vincent A. O'Connor	Democrat	Attorney-at-law	698 Decatur st., B'klyn.
6	Lester D. Volk	Progressive	Physician	140½ Floyd st., B'klyn.
7	Daniel F. Farrell	Democrat	Hatter	378 17th st., Brooklyn.
8	John J. McKeon	Democrat	Real estate	413 Smith st., B'klyn.
9	Frederick S. Burr	Democrat	Real estate–insurance	330 80th st., Brooklyn.
10	George Edward Dennen	Democrat	Newspaperman	76 Clermont ave., B'klyn.
11	Karl Soden Deitz	Democrat	Lawyer	477 Park pl., Brooklyn.
12	Wm. Pinkney Hamilton, Jr.	Democrat	Lawyer	573 2nd st., Brooklyn.

13	James H. Finnigan	Democrat	Agent	183 Skillman ave., B'klyn
14	James J. Garvey	Democrat	Cigar dealer	515 Leonard st., B'klyn.
15	Thomas E. Willmott	Democrat	Piano maker	194 Russell st., Brooklyn.
16	Jesse P. Larrimer	Democrat	Engineer and contractor	1533 W. 6th st., B'klyn.
17	Frederick Ulrich	Democrat	Designer and draughtsman	1476A Fulton st., B'klyn.
18	Joseph Henry Esquirol	Democrat	Real estate	25 Crooke ave., B'klyn.
19	Jacob Schifferdecker	Democrat	Real estate and insurance	225 Hamburg ave., B'klyn.
20	Cornelius J. Cronin	Democrat	Printer	74A Schaeffer st., B'klyn.
21	Harry Heyman	Democrat	Butcher	321 Lorimer st., B'klyn.
22	Joseph J. Monahan	Democrat	Conductor	70 Desales Pl., B'klyn.
23	Thomas L. Ingram	Democrat	Painter and decorator	1966 Fulton st., B'klyn.
	LEWIS.			
	James B. VanWoert	Democrat	Farmer	Greig.
	LIVINGSTON.			
	Edward M. Magee	Republican	Agriculturist	Groveland Sta.
	MADISON.			
	Morell E. Tallett	Republican	Coal and produce	DeRuyter.
	MONROE.			
1	Jared W. Hopkins	Republican	Farmer	Pittsford.
2	Simon Louis Adler	Republican	Lawyer	811 Wilder Bldg, Roch.
3	August V. Pappert	Republican	Lawyer	605 Ins. bldg., Rochester.
4	Cyrus W. Phillips	Republican	Lawyer	713 Ins. bldg., Rochester.
5	Charles H. Gallup	Democrat	Farmer	Adams Basin.
	MONTGOMERY.			
	Walter A. Gage	Republican	Merchant	Canajoharie.
	NASSAU.			
	Thomas B. Maloney	Democrat	Broker	Great Neck Sta., L. I.

MEMBERS OF ASSEMBLY — (*Continued*).

Dist.	Name.	Politics.	Occupation.	Post-office Address.
	NEW YORK.			
1	Thomas Byron Caughlan..	Democrat....	Broker.....	81 Varick st., N. Y.
2	Alfred E. Smith.....	Democrat....	Real estate.....	25 Oliver st., N. Y.
3	Harry E. Oxford.....	Democrat....	Real estate.....	41 Third ave., N. Y.
4	Aaron J. Levy.....	Democrat....	Lawyer.....	307 E. Broadway, N. Y.
5	James J. Walker.....	Democrat....	Lawyer.....	6 St. Luke's Pl., N. Y.
6	Jacob Silverstein.....	Democrat....	Lawyer.....	146 Lewis st., N. Y.
7	Peter P. McElligott.....	Democrat....	Lawyer.....	428 W. 24th st., N. Y.
8	Solomon Sufrin.....	Progressive...	Lawyer.....	107 Rivington st., N. Y.
9	Charles D. Donohue.....	Democrat....	Lawyer.....	408 W. 43d st., N. Y.
10	Meyer Greenberg.....	Democrat....	Lawyer.....	104 Second ave., N. Y.
11	John Kerrigan.....	Democrat....	Real estate.....	342 W. 47th st., N. Y.
12	Joseph D. Kelly.....	Democrat....	Lawyer.....	223 E. 17th st., N. Y.
13	James C. Campbell.....	Democrat....	Undertaker.....	827 10th ave., N. Y.
14	Robert Lee Tudor.....	Democrat....	Publisher.....	159 Lexington ave., N. Y.
15	Theodore Hackett Ward...	Democrat....	Lawyer.....	324 W. 83d st., N. Y.
16	Martin G. McCue.....	Democrat....	Laundry supply.....	328 E. 46th st., N. Y.
17	Mark Eisner.....	Democrat....	Lawyer.....	170 Broadway, N. Y.
18	Mark Goldberg.....	Democrat....	Lawyer.....	222 E. 72d st., N. Y.
19	Thomas F. Denney.....	Democrat....	Salesman.....	263 W. 114th st., N. Y.
20	Patrick J. McGrath.....	Democrat....	Lawyer.....	300 E. 81st st., N. Y.
21	Thomas Kane.....	Democrat....	Salesman.....	334 W. 124th st., N. Y.
22	Edward Weil.....	Democrat....	Lawyer.....	132 Nassau st., N. Y.
23	David Chester Lewis.....	Democrat....	Lawyer.....	189 Edgecomb ave., N. Y.
24	Owen M. Kiernan.....	Democrat....	Inspector of fuel.....	163 E. 89th st., N. Y.
25	David H. Knott.....	Democrat....	Apartment hotel.....	103 Waverly Pl., N. Y.
26	Abraham Greenberg.....	Democrat....	Attorney.....	1210 Fifth ave., N. Y.
27	Raymond B. Carver.....	Democrat....	Civil engineer.....	16 E. 37th st., N. Y.
28	Salvatore A. Cotillo.....	Democrat....	Lawyer.....	277 Pleasant ave., N. Y.

29	Charles Joseph Carroll	Democrat	Lawyer	106 E. 84th st., N. Y.
30	Louis A. Cuvillier	Democrat	Lawyer	172 E. 122d st., N. Y.
31	Michael Schaap	Progressive	Lawyer	2041 5th ave., N. Y.
32	Louis D. Gibbs	Democrat	Lawyer	846 Beck st., Bronx, N. Y.
33	Thomas John Lane	Democrat	Real estate	535 St. Ann's ave., N. Y.
34	Patrick Joseph McMahon	Democrat	Inspector of highways	801 Tremont ave., N. Y.
35	Ernest E. L. Hammer	Democrat	Lawyer	2636 Morris ave., N. Y.
	NIAGARA.			
1	Frank Mead Bradley	Republican	Farmer	Barker.
2	Eugene A. McCollum	Democrat	Attorney	55 Main st., Lockport.
	ONEIDA.			
1	Fred Frank Emden	Democrat	Knitting machine fixer	62 Erie st., Utica.
2	Herbert Erwin Allen	Republican	Merchant	Clinton.
3	John Brayton Fuller	Republican	Farmer	Marcy.
	ONONDAGA.			
1	Patrick J. Kelly	Democrat	Merchant	Marcellus.
2	Stephen Gay Daley	Democrat	Lawyer	617 Onondaga savings bank bld'g., Syracuse.
3	Thomas K. Smith	Republican	Lawyer	58 Wieting bl'k., Syracuse.
	ONTARIO.			
	Herman Ferdinand Schnirel	Republican	Professor of modern languages	Geneva.
	ORANGE.			
1	Caleb H. Baumes	Republican	Lawyer	Newburgh.
2	William Thomas Doty	Democrat	Farmer	Circleville.
	ORLEANS.			
	Marc Wheeler Cole	Democrat	Farmer	Albion.
	OSWEGO.			
	Thaddeus C. Sweet	Republican	Paper manufacturer	Phoenix.

MEMBERS OF ASSEMBLY — (*Continued*).

Dist.	NAME.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
	OTSEGO.			
	LaVerne P. Butts	Democrat	Merchant	Oneonta.
	PUTNAM.			
	John R. Yale	Republican	Contractor	Brewster.
	QUEENS.			
1	Samuel J. Burden	Democrat	Hotelkeeper	65 Webster ave., L. I. City
2	Alfred J. Kennedy	Democrat	Real estate	27 S. 11th ave., Whitestone.
3	Albert C. Benninger	Democrat	Real estate	115 Foxhall st., Ridgewood
4	Howard Sutphin	Democrat	Broker	Jamaica.
	RENSSELAER.			
1	C. Fred Schwarz	Democrat	Lawyer	174 4th st., Troy.
2	Tracey D. Taylor	Democrat	Real estate	Berlin.
	RICHMOND.			
	Ralph Rappé McKee	Democrat	Importer	Tompkinsville.
	ROCKLAND.			
	Frederick George Grimme	Democrat	Lawyer	Sparkill.
	ST. LAWRENCE.			
1	Frank L. Seaker	Republican	Farmer	Gouverneur.
2	John A. Smith	Republican	Attorney	North Lawrence.
	SARATOGA.			
	Gilbert Thompson Seelye	Republican	Farmer	Burnt Hills.

SCHENECTADY.			
Arthur Porter Squire	Democrat	Physician	Rotterdam Junction.
SCHOHARIE.			
Edward A. Dox	Democrat	Lawyer	Richmondville.
SCHUYLER.			
John W. Gurnett	Democrat	Merchant	Watkins.
SENECA.			
Augustus S. Hughes	Democrat	Merchant	114 Fall st., Seneca Falls.
STEUBEN.			
1 Charles A. Brewster	Democrat	Lumber	Addison.
2 James L. Seely, Jr	Democrat	Cigar manufacturer	Canisteo.
SUFFOLK.			
1 Stephen A. Fallon	Democrat	Real estate	Setauket.
2 John J. Robinson	Democrat	Lawyer	Centreport.
SULLIVAN.			
John K. Evans	Democrat	Merchant	Bloomingburgh.
TIOGA.			
John Gilbert Pembleton	Republican	Lawyer	Tioga Center.
TOMPKINS.			
Minor McDaniels	Democrat	Physician	Ithaca.
ULSTER.			
1 Lawrence M. Kenney	Democrat	Blue stone dealer	Saugerties.
2 Eldridge M. Gathright	Democrat	Lawyer	Marlboro.
WARREN.			
Henry E. H. Brereton	Republican	Farmer	Diamond Point, Lake George.

MEMBERS OF ASSEMBLY — (*Concluded*).

Dist.	NAME.	POLITICS.	OCCUPATION.	POST-OFFICE ADDRESS.
	WASHINGTON.			
	Eugene R. Norton	Republican	Roofing, slate	Granville.
	WAYNE.			
	Albert Yeomans	Republican	Fruit grower & farmer.	Walworth.
	WESTCHESTER.			
1	Tracy P. Madden	Democrat	Lawyer	72 Warburton ave., Yonkers.
2	Verne Morgan Bovie	Democrat	Lawyer	New Rochelle.
3	Wilson Randolph Yard	Democrat	Lawyer	Pleasantville.
4	Mortimer Charles O'Brien	Democrat	Lawyer	White Plains.
	WYOMING.			
	John Knight	Republican	Lawyer	Arcade.
	YATES.			
	Edward C. Gillett	Republican	Farmer & fruit grower.	Penn Yan.

Democrats	104
Republicans	42
Progressives	4
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Previous Service in the Legislature of the Members of Assembly for 1913.

NAMES.	COUNTIES.	YEARS.
Adler, Simon L.	Monroe	1911, 1912.
Allen, Herbert E.	Oneida	1910, 1911, 1912.
Baumes, Caleb H.	Orange	1909, 1910, 1911, 1912.
Brereton, Henry H. E.	Warren	1911, 1912.
Bryant, Clarence	Genesee	1911, 1912.
Bush, Robert P.	Chemung	1886, '87, '88, '89, '90, '91, (Speaker '92), '94, 1911, 1912.
Campbell, James C.	New York	1912.
Caughlan, Thomas B.	New York	1904, '05, '06, '08, '09, '10, '11, 1912.
Cuvillier, Louis A.	New York	1907, '08, '09, '11, '12.
Evans, John K.	Sullivan	1910, 1911, 1912.
Farrell, Daniel F.	Kings	1910, 1911, 1912.
Gage, Walter A.	Montgomery	1912.
Garvey, James J.	Kings	1912.
Geoghan, George	Erie	1900, 1901.
Gillen, William J.	Kings	1909, 1910, 1911, 1912.
Gillett, Edward C.	Yates	1912.
Goldberg, Mark	New York	1907, '08, '09, '10, '11, '12.
Grace, Michael	Cayuga	1912.
Greenberg, Abraham	New York	1908.
Greenberg, Meyer	New York	1912.
Gurnett, John W.	Schuyler	1905, 1906, 1911, 1912.
Hearn, Richard F.	Erie	1910, 1911, 1912.
Heyman, Harry	Kings	1911, 1912.
Hinman, Harold J.	Albany	1910, 1911, 1912.
Hopkins, Jared W.	Monroe	1912.
Horton, Clinton T.	Erie	1912.
Jackson, Edward D.	Erie	1907, 1909, 1910, 1911, 1912.
Jones, John G.	Jefferson	1911, 1912.

PREVIOUS SERVICE — (*Concluded*).

NAMES.	COUNTIES.	YEARS.
Kennedy, Alfred J	Queens	1911, 1912.
Kerrigan, John	New York	1889, 1890, 1891, 1393.
Levy, Aaron J	New York	1908, '09, '10, '11, '12.
Macdonald, Alexander	Franklin	1910, 1911, 1912.
Machold, H. Edmund	Jefferson	1912.
Madden, Tracy P	Westchester	1912.
Malone, John G	Albany	1912.
McCue, Martin G	New York	1907, '08, '09, '10, '11, 1912.
McElligott, Peter P	New York	1909, 1910, 1911, 1912.
McDaniels, Minor	Tompkins	1911, 1912.
McGrath, Patrick J	New York	1908, 1909, 1910, 1911, 1912.
McKee, Ralph R	Richmond	1912.
McKeon, John J	Kings	1909, 1910, 1911, 1912.
Norton, Eugene R	Washington	1906, 1907.
Oxford, Harry E	New York	1902, 1903.
Pappert, August V	Monroe	1911, 1912.
Patrie, J. Lewis	Greene	1910, 1911, 1912.
Pembleton, John G	Tioga	1912.
Phillips, Cyrus W	Monroe	1909, 1910, 1911, 1912.
Prime, Spencer G., 2d	Essex	1912.
Richardson, Ransom L	Allegany	1912.
Rozan, James M	Erie	1909, 1910, 1912.
Schifferdecker, Jacob	Kings	1911, 1912.
Schwarz, C. Fred	Rensselaer	1912.
Seaker, Frank L	St. Lawrence	1912.
Shepardson, Walter A	Chenango	1910, 1911, 1912.
Smith, Alfred E	New York	1904, '05, '06, '07, '08, '09, '10, '11, 1912.
Smith, Myron	Dutchess	1906, '07, '08, '09, '10, 1912.

Smith, Thomas K	Onondaga	1911, 1912.
Sullivan, John Leo	Chautauqua	1909, 1910, 1911, 1912.
Sweet, Thaddeus C	Oswego	1910, 1911, 1912.
Tallett, Morell E	Madison	1912.
Vert, Charles J	Clinton	1912.
Walker, James J	New York	1910, 1911, 1912.
Weil, Edward	New York	1911, 1912.
Willmott, Thomas E	Kings	1912.
Yale, John R	Putnam	1902, '03, '04, '05, '06, '07, '08, '09, '10, '11, 1912.
Yeomans, Albert	Wayne	1911, 1912.

RULES

OF THE

SENATE OF THE STATE OF NEW YORK

RULES

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SENATE OF THE STATE OF NEW YORK

ADOPTED JANUARY 12, 1911.

RULES OF THE SENATE.

Order of Business.

1. President to take the chair; journal to be read. Order of business.

Of the President.

2. (1) To decide questions of order; name committees.
   (2) To assign doorkeepers to their respective duties and stations.
   (3) To certify passage of all bills.

Of the Temporary President.

3. In the absence of the Lieutenant Governor, Temporary President to act.

Of the Clerk.

4. (1) To have journals printed and placed on file.
   (2) To furnish, daily, printed list of general orders; to see that all bills are acted upon in order in which reported; calendar.
   (3) To present bills originating in Senate to Governor, and to enter on journals. To transmit bills to Assembly.
   (4) To designate reporters.

Of the Sergeant-at-Arms.

5. To be in attendance on the Senate, to preserve order.

Of the Rights and Duties of Senators.

6 (1) Relative to presentation of petitions, reports, resolutions, etc.

(2) To preserve order while journals or public papers are being read.

(3) Debate; Senators to address the President, and not to proceed until recognized; limitation; President to decide who is entitled to floor.

(4) Within bar of Senate when question is stated, to vote, unless, etc.

(5) Wishing to be excused from voting, may make brief statement.

(6) and (7) Absentees to be sent for.

Committees and their Duties.

7. Standing committees.
8. On printed and engrossed bills, to examine all bills, resolutions, etc., and report as correctly printed or engrossed before third reading.
9. On revision, duties of.
10. Reports of committees on bills; proceedings when not considered at time of making.

Of General Orders and Special Orders.

11. What to constitute the general orders; business of; how taken up.
12. Special orders.

Of the Committee of the Whole.

13. Rules to be observed in; may strike out enacting clause in bills, and if report is agreed to by Senate, bill to be deemed rejected.

14. Bills, committed to, to be read through by sections; amendments not offered in, not in order except by unanimous consent.
15. Motion to rise and report progress always in order.

Of Bills.

16. How introduced.
17. Proceedings when reported by committee of the whole, when deemed lost; final question to be taken immediately after third reading.
18. To receive three readings; not to be amended or committed until twice read; not to be read a third time out of its order; resolutions proposing amendments to Constitution to be treated as bills, to be acted on in committee of the whole.
19. Or resolution amending Constitution, after ordered to a third reading, may not be amended, except, etc.
20. Two-third bills.
21. Question on final passage to be taken by ayes and nays.
22. To be printed in the order as reported by committee, unless, etc.
23. When final vote on, may be reconsidered; to be read by sections.
24. To retain place when quorum not present.

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25. When question is before Senate, no motion to be received, except, etc.; motion to adjourn or lay on the table to be decided without debate.
26. When to be reduced to writing.
27. When questions to be divided.
28. Certain to preclude debate of main question.
29. Filling of blanks; question, how taken.
30. Reconsideration.
31. Concurrent resolutions.

Of Closing Debate.

32. Closing debate.
33. Of a quorum.

Of Questions of Order.

34. Priority of business.
35. When reading of paper is called for and objected to, to be decided without debate.
36. Senator called to order; to take his seat; when may proceed; words objected to to be taken down in writing.
37. Divisions; when names to be entered alphabetically on journal; Senators to vote unless excused.

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38. When President shall direct doors to be closed, etc.; secrecy to be observed.
39. Proceedings in, to be kept in separate journal.
40. Senate may go into, when deemed necessary; nominations in, how referred.

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41. Who may take books from Senate chamber; duty of librarian.
42. Superintendent of documents to place documents and bills on files; postmaster to see that mails are punctually delivered.
43. Senate library, post-office and document room to be open.
44. Alteration, suspending or rescinding of rules.
45. Claims before, reported adversely upon, papers relative to, to remain on files of Senate, unless, etc.
46. Resolutions for expenditure of moneys must be decided by a majority vote.
47. Call of the Senate.
48. Admissions to floor of Senate chamber.
49. Employees and others not to solicit subscriptions.

ORDER OF BUSINESS.

1. The President shall take the chair at the hour to which the Senate shall have adjourned, and a quorum being present, the Journal of the preceding day shall be read, to the end that any mistakes therein may be corrected. After the reading and approving of the Journal the order of business shall be as follows:

1. The presentation of petitions.
2. Introduction of bills, by districts, in their numerical order.
3. Messages from the Assembly.
4. Messages from the Governor.
5. Reports of standing committees.
6. Reports of select committees.
7. Communications and reports from State officers.
8. Third reading of bills.
9. Motions and resolutions.
10. Special orders.
11. General orders.

But messages from the Governor and Assembly, communications and reports from State officers, reports from the Committee on Privileges and Elections involving the right of a Senator to his seat, and reports from the Committee on Engrossed Bills, on Revision and on Rules shall be received at any time. The Committee on Rules may sit at any time; consideration of its report shall always be in order, debate on its adoption shall not exceed one hour, one-half hour for and one-half hour against, and

no other motion shall be in order until the vote of the Senate is had thereon.

OF THE PRESIDENT.

2. (1) The President shall preserve order and decorum; in case of disturbance or disorderly conduct in the lobby or galleries, he may cause the same to be cleared; he shall decide all questions of order, subject to appeal to the Senate. On every appeal he shall have the right, in his place, to assign his reasons for his decision; he shall appoint all committees, except when the Senate shall otherwise order. When the Senate shall be ready to go into committee of the whole, he shall name a chairman to preside therein.

(2) He shall assign to the doorkeepers their respective duties and stations.

(3) Immediately upon the final passage of any bill by the Senate, he shall certify that the same has been duly passed, with the date thereof, together with the fact whether passed as a majority, three-fifths or two-thirds bill, as required by the Constitution and Laws of the State, and deliver said bill to the Clerk.

OF THE TEMPORARY PRESIDENT.

3. The Temporary President, when acting as President, shall be invested with all the powers and duties conferred by these rules upon the President.

OF THE CLERK.

4. (1) It shall be the duty of the Clerk to have the Journal of each day's proceedings printed, and copies

thereof placed on the files of the President, Senators and reporters within three days after approval by the Senate.

(2) He shall also furnish each Senator daily with a printed list of the general orders, which shall be kept on file by the Superintendent of Documents, in the same manner as other documents, and he shall also prepare a daily calendar of all bills, engrossed or printed, for a final reading, and place and keep the same, together with printed copies of such bills, on the desk of each Senator; he shall see that all bills shall be acted upon by the Senate in the order in which they are reported and stand upon the calendar, unless otherwise ordered by two-thirds of the Senate.

(3) He shall present to the Governor, and enter upon the Journals, such bills as shall have originated in the Senate and been passed by both Houses. He shall, subject to the rules of the Senate, transmit to the Assembly all bills or concurrent resolutions which have passed the Senate.

(4) He shall designate the persons entitled to admission to the floor as reporters for the public press, not exceeding thirty-five in number, and may revoke any such designations, but no person shall be entitled to the privileges of the floor of the Senate as a legislative reporter of a newspaper who is interested in pending or contemplated legislation, or who is employed or receives compensation for influencing legislation.

OF THE SERGEANT-AT-ARMS.

5. The Sergeant-at-Arms, except when absent in the discharge of his duties, shall be in constant attendance

upon the sessions of the Senate, and, under the direction of the President, aid in enforcing order on the floor of the Senate, in the lobbies, and in the rooms adjoining the Senate Chamber, and also see that no person remains on the floor unless entitled to the privileges of the same.

OF THE RIGHTS AND DUTIES OF SENATORS.

6. (1) A Senator presenting a paper shall indorse the same; if a petition, memorial, or report to the Legislature, with a brief statement of the subject of its contents, adding his name; if a notice or resolution, with his name; if a report of a committee, a statement of such report, with the name of the committee and Senator making the same.

(2) Senators shall not speak to each other or otherwise interrupt the business of the Senate, or read any newspaper while the Journals or public papers are being read; or walk out of or across the Chamber when the President is putting a question, or when a Senator is speaking pass between him and the chair.

(3) A Senator rising to debate or to present a petition or other paper, to give a notice, make a motion or report, shall address the President and shall not proceed further until recognized by the chair; he shall speak on the same subject but twice the same day without leave of the Senate; and where two or more Senators address the chair, the President shall name the Senator who is first to speak.

(4) Every Senator shall be present within the Senate Chamber during the sessions of the Senate, unless duly

excused or necessarily prevented, and shall vote on each question stated from the chair unless excused by the Senate, or unless he has a direct personal or pecuniary interest in the event of such question. If any Senator refuses to vote, unless he be excused by the Senate, or unless he be interested, such refusal shall be deemed a contempt.

(5) A Senator desiring to be excused from voting may, when his name is called, make a brief statement, not occupying over five minutes, of the reasons for making such request, and the question on excusing him shall then be taken without debate, and any Senator desiring to explain his vote upon a bill, may, when his name is called, be allowed a like opportunity.

(6) In case a less number than a quorum of the Senate shall convene, those present are authorized to send the Sergeant-at-Arms, or any other person, for the absent Senators.

(7) In all cases of absence of Senators during the sessions of the Senate the Senators present may take such measures as they deem necessary to secure the presence of the absentees, and in addition to suspension for a given period, may inflict such censure or penalty as they may deem just on those who shall not render sufficient excuse for their absence.

7. There shall be the following standing committees:

To consist of eleven members each:

Finance.
Judiciary.
Affairs of cities.
Railroads.

To consist of nine members each:
Canals.
Commerce and navigation.
Codes.
Insurance.
Taxation and retrenchment.
Forest, Fish and Game Laws.
Internal affairs of towns and counties.

To consist of seven members each:
Banks.
Military affairs.
Miscellaneous corporations.
Public health.
Public education.
Penal institutions.
Revision.
Affairs of villages.
Agriculture.
Labor and industries.
Privileges and elections.

To consist of five members each:
Printed and engrossed bills.
Public printing.
Rules.

8. The committee on printed and engrossed bills shall examine all bills, amendments and resolutions which are required to be printed or engrossed, before they go out of the possession of the Senate, and make report when they find them correctly printed or engrossed before they are read the third time; they shall also compare

such amendments as may be made in the Assembly to Senate bills, and that are concurred in by the Senate after they shall have been reprinted or re-engrossed in the Senate for the purpose of seeing if they are correctly printed or engrossed. And no bill shall be passed unless it shall have been printed and upon the desk of each Senator in its final form at least three calendar legislative days prior to its final passage, unless the Governor or acting Govenor shall have certified to the necessity of its immediate passage, under his hand and the seal of the State, nor unless the committee on printed and engrossed bills shall have reported that such bill is correctly printed or engrossed. All bills recalled from the Governor for the purpose of amendment, if amended, and all Senate bills amended by the Assembly, and returned to the Senate for its concurrence, and all bills amended by the report of a conference committee, shall be subjected to the provisions of this rule and the second clause of Rule 4.

9. The committee on revision shall examine and correct bills referred to it, for the purpose of avoiding repetitions and ensuring accuracy in the text and references. It shall also report whether the object sought to be accomplished can be secured without a special act under existing laws, or by enactment of a general law.

10. Every report of a committee upon a bill which shall not be considered at the time of making the same, or laid on the table by a vote of the Senate shall stand upon the general orders with the bill and be entered upon the Journal.

OF GENERAL ORDERS AND SPECIAL ORDERS.

11. The matters referred to the committee of the whole Senate shall constitute the general orders, and the business of the general orders shall be taken up as follows, viz.: When the chairman named by the President has taken the chair, the Clerk shall announce the title of each bill, with the printed number, or other matter, as it shall be reached in its order, when it may be taken up on the motion of any Senator without the putting of any question therefor, and be considered immediately, and so on until the calendar is exhausted, or a motion is carried that the committee arise. Any bill not so moved shall lose its preference for the day.

12. Whenever any bill or other matter is made a special order for a particular day, and it shall not be completed on that day, it shall, unless otherwise ordered, retain its place on the calendar, as a special order in the order of business in which it was considered; and when a special order is under consideration, it shall take precedence of any special order for a subsequent hour of the same day; but such subsequent special order may be taken up immediately after the previous special order has been disposed of.

OF THE COMMITTEE OF THE WHOLE.

13. The rules of the Senate shall be observed in the committee of the whole, so far as they may be applicable, except limiting the number of times of speaking, and except that the ayes and noes shall not be taken. Such committee may strike out the enacting clause of

a bill and report that fact to the Senate; and if the report be agreed to by the Senate, it shall be deemed a rejection of the bill. But whenever the committee is engaged in the investigation of any charges against any of its members the rules of the Senate shall apply.

14. Bills committed to the committee of the whole Senate shall, in committee of the whole, be read through by sections. The report shall state whether or not said bill has been amended in committee of the whole. After the report the bill shall be subject to debate and amendment before the question to print or engross it is put; but such amendments only shall be in order as were offered and decided in the committee of the whole Senate, except by unanimous consent.

15. A motion that the committee rise and report progress on any bill shall always be in order, and shall be directed without debate.

OF BILLS.

16. Every bill shall be introduced by a Senator in his place, or on the report of a committee, or by message from the Assembly, and after its first and second reading unless otherwise ordered by the Senate, shall be referred to a standing or select committee, to consider and report thereon. When a bill is received as a message from the Assembly, and a Senate bill, identical therewith, is on the order of third reading in the Senate, or in the committee of the whole, the Assembly bill may be substituted for the Senate bill upon a vote of a majority of the Senate. A motion for such substitution shall be in order under the order of business of messages from the Assembly, motions and resolu-

tions, or the order of business in which the Senate bill is. No private bill shall be introduced by a Senator, or on a report of a committee, unless accompanied by a memorial or petition signed and verified by the party or parties praying for the passage of the same, except by order of the Senate.

Every bill introduced by a Senator shall be in duplicate and shall have indorsed thereon a statement of its title, with his name.

The titles of all bills proposing amendments to the Greater New York Charter, or the Penal Code, the Code of Criminal Procedure, the Code of Civil Procedure, the Revised Statutes, the Consolidated Laws, or to any existing laws having a short title when introduced, must quote the descriptive name of the Code or the short title of the Consolidated Laws, or Revised Statutes, or law to be amended, with some brief reference to the subject-matter of the proposed amendment, and the Clerk of the Senate is hereby directed to return any bill to the Senator introducing the same, when this rule has not been complied with.

17. When a bill shall be reported by the committee of the whole, and not otherwise disposed of, the question shall be, "Shall the report be agreed to?" And when the report of such committee, if favorable, shall be agreed to and the bill not otherwise disposed of, the bill shall be ordered printed and engrossed for a third reading. Upon such question the merits of the bill may be debated, and a motion to commit, or recommit, or to amend, as provided in the fourteenth rule, or lay on

the table, or to postpone to a future day, shall be in order. If such question be decided in the negative, such bills shall be deemed lost.

18. Every bill shall receive three readings previous to its being passed, and the President shall give notice at each, whether it be the first, second or third. No bill shall be amended or committed until it shall have been read twice, and no bill shall be read a third time out of its regular order, unless on a vote of two-thirds of all the Senators present voting; and all resolutions which propose any amendment of the Constitution, or ratify any proposed amendment to the Constitution of the United States, shall be treated in the form of proceedings on them, in a similar manner with bills, and no bills shall be ordered to a third reading without having been acted upon in committee of the whole.

The Calendar of bills on the order of third reading shall consist of all bills which have been ordered to a third reading by vote of the Senate, and, as well, all Assembly bills which, having passed the Senate, have been subsequently reconsidered upon recall from the Governor and thereupon amended by the Assembly.

19. After a bill or resolution to amend the Constitution shall be ordered to a third reading, no motion to amend the same shall be in order without unanimous consent; but any such bill or resolution may be committed prior to the final reading thereof.

20. When any bill requiring the concurrence of two-thirds of the Senators is under consideration, such concurrence shall not be requisite except on the question of its final passage.

21. The question on the final passage of every bill shall be taken by ayes and noes, which shall be entered on the Journal, and unless the bill receives the number of votes required by the Constitution to pass it, it shall be declared lost, except in cases provided for by the twenty-fourth rule, and such question shall be taken immediately after the third reading and without debate.

22. Every bill immediately upon its introduction shall be printed and placed on the files of the Senators. It shall retain its original printed number when reprinted, together with its new number thereafter during all stages of its progress. All bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted.

Every bill when introduced, and every amendment thereafter made to such bill amending existing law, must have all new matter underscored, and all matter eliminated by amendment from existing law must appear in its proper place inclosed in brackets. In the printed bill such new matter shall be italicized and all matter eliminated from existing law shall be inclosed in black-faced brackets. Where a printed bill is amended by eliminating new matter from such bill, the same shall be omitted in the reprint of the original.

It shall be the duty of the President to direct the Clerk to cause any bill appearing on the calendar and not complying with this rule to be immediately amended and reprinted so as to comply with the same.

There shall be printed for the use of the Senate as authorized by section seven of the State Printing Law,

three hundred additional copies of such general Senate bills as may be designated by the Clerk of the Senate.

23. The vote on the final passage of any bill appropriating moneys or property, or creating, continuing, altering or removing any body politic or corporate, shall not be reconsidered whenever any such bill shall be lost, unless by a vote of a majority of all the Senators elected, but all other bills, when the same shall have been lost, may be reconsidered by a vote of a majority of all the Senators present and voting.

24. If, on taking the final question on a bill, it shall appear that a constitutional quorum is not present, or if the bill requires a vote of two-thirds of all the Senators elected to pass it, and it appears that such number is not present, the bill shall retain its place on the calendar and be again taken up in its regular order.

ON MOTIONS AND THEIR PRECEDENCE.

25. When a question is before the Senate, only the following motions shall be received, and such motions shall have precedence in the order here stated, viz.:

1. For an adjournment.
2. For a call of the Senate.
3. To lay on the table.
4. To postpone indefinitely.
5. To postpone to a certain day.
6. To commit to a standing committee.
7. To commit to a select committee.
8. To commit to the committee of the whole.
9. To amend.

The motion to adjourn, or for a call of the Senate, or to lay on the table, shall be decided without debate, and shall always be in order except as provided in Rules 1, 32 and 47.

26. All motions shall be reduced to writing, if desired by the President or any Senator, delivered to the Clerk, and read before the same shall be debated; any motion may be withdrawn at any time before decision or amendment.

27. If the question in debate contains several points, a Senator may have the same divided, provided the division called for embodies a distinct principle or statement of fact.

28. A motion to postpone, commit or refer, until it is decided, shall preclude all debate of the main question.

29. When a blank is to be filled, and different sums or time shall be proposed, the question shall be first taken on the highest sum and the longest time.

30. When a question has once been put and decided, it shall be in order for any Senator to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment or motion, upon which the vote was taken, shall have gone out of the possession of the Senate; and before the first day of March no bill or resolution shall be sent from the Senate on the day of its passage; nor shall any motion for reconsideration be in order unless made on the same day on which the vote was taken, or within the next three days of the actual session of the Senate thereafter. Nor shall any question be reconsidered more than once.

But when a bill or resolution shall have been recalled from the Governor or from the Assembly, a motion for reconsideration may be made at any time thereafter while the same is in the possession of the Senate, and all resolutions recalling a bill or resolution from the Governor or Assembly shall be regarded as privileged. No vote shall be reconsidered upon either of the following motions:

To adjourn.

To lay on the table.

31. All concurrent resolutions shall lie on the table at least one day, except as otherwise directed by Rules 18 and 30, and except concurrent resolutions referring to adjournment.

ON CLOSING DEBATE.

32. When any bill, resolution or motion shall have been under consideration for six hours it shall be in order for any Senator to move to close debate, and the President shall recognize the Senator who wishes to make such motion. Such motion shall not be amendable or debatable and shall be immediately put, and if it shall receive the affirmative votes of a majority of the Senators present, the pending measure shall take precedence over all other business. The vote shall thereupon be taken upon such bill, motion or resolution, with such amendments as may be pending at the time of such motion according to the rules of the Senate, but without further debate, except that any Senator who may desire so to do shall be permitted to speak thereon not more than once and not exceeding

one-half hour. After such motion to close debate has been made by any Senator no other motion shall be in order until such motion has been voted upon by the Senate. After the Senate shall have adopted the motion to close debate, as hereinbefore provided, no motion shall be in order but one motion to adjourn and a motion to commit. Should said motion to adjourn be carried, the measure under consideration shall be the pending question when the Senate shall again convene, and shall be taken up at the point where it was at the time of such adjournment. The motion to close debate may be ordered upon a single motion, a series of motions allowable under the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill, resolution or motion to its passage or rejection. All incidental questions of order, or motions pending at the time such motion is made to close debate, whether the same be on appeal or otherwise shall be decided without debate.

33. If at any time during the session of the Senate a question shall be raised by any Senator as to the presence of a quorum, the presiding officer shall forthwith direct the Clerk to call the roll, and shall announce the result, and such proceedings shall be without debate; but no Senator while speaking shall be interrupted by any other Senator raising the question of a lack of a quorum, and the question as to the presence of a quorum shall not be raised oftener than once in every hour unless the lack of a quorum shall be disclosed upon a roll call of the ayes and noes. Whenever upon a roll call any Senator who is upon the floor of the

Senate chamber refuses to make response when his name is called, it shall be the duty of the presiding officer, either upon his own motion or upon the suggestion of any Senator, to request the Senator so remaining silent to respond to his name, and if such Senator fails to do so, the fact of such request and refusal shall be entered in the Journal, and such Senator shall be counted as present for the purpose of constituting a quorum.

OF QUESTIONS OF ORDER.

34. All questions relating to the priority of business shall be decided without debate.

35. When the reading of a paper is called for, except petitions, and the same is objected to by any Senator, it shall be determined by a vote of the Senate, without debate.

36. When a Senator shall be called to order, he shall take his seat until the President shall have determined whether he is in order or not; and if decided to be out of order, he shall not proceed without the permission of the Senate; and every question of order shall be decided by the President, subject to an appeal to the Senate by any Senator. No second appeal shall be determined until the original appeal shall be decided; and if a Senator shall be called to order for words spoken, the words excepted to shall be immediately taken down in writing.

37. Upon a division in the Senate, the names of those who voted for or against a question shall be entered alphabetically on the Journal, if any Senator requires

it, except on motion to excuse a Senator from voting, which shall be decided by count; and each Senator called upon, unless for special reasons he be excused by the Senate, shall declare openly and without debate his assent or dissent to the question.

OF EXECUTIVE SESSION.

38. On motion to close the doors of the Senate, on the discussion of business which in the opinion of any Senator may require secrecy, and during the consideration of all business in executive session, the President shall direct all persons, except the Senators and Clerk of the Senate, his messenger, the Journal Clerk and Sergeant-at-Arms of the Senate to withdraw; and during the discussion of said motion the doors shall remain shut; and every Senator and officer of the Senate shall keep secret all such matters, proceedings and things which shall transpire while the doors remain closed.

39. The proceedings of the Senate upon executive business shall be kept in a Journal separate from its proceedings upon legislative business.

40. The Senate shall go into consideration of executive business at such times as may be ordered by a vote of the majority of the Senators present. All nominations sent by the Governor for the appointment of any officer (except notaries public) shall be referred, unless the Senate otherwise orders, to a standing committee of the Senate. Nominations of persons for the office of notary public shall be referred to the Senator from the district in which the nominee resides, except

that when the nominee resides in the city and county of New York, the reference shall be to the Senators from that city and county; and when the nominee resides in the county of Kings, the reference shall be to the Senators from that county.

MISCELLANEOUS PROVISIONS.

41. None but the President, Senators and Clerks shall be allowed to take books belonging to the Senate Library; and on taking books, each of the persons above mentioned shall furnish to the Librarian a list of those taken and his name, and shall be responsible for them; and it shall be the duty of the Librarian to have a book in which to enter the delivery of the books so taken and their return, and it shall be his duty to see that the books in the library are kept in order and in their place at the opening of each morning session.

42. It shall be the duty of the Superintendent of Documents and his assistants to have the documents and bills promptly placed on the files of the President and Senators in the order of their numbers, and it shall be the duty of the postmaster to see that the mails are punctually delivered.

43. The Senate library, post-office and document rooms shall be opened every morning during the session of the Legislature at 8.30 o'clock and remain open until 5.30 p. m., and shall also be open during all the hours the Senate is in session, except that on Sundays the post-office shall be open from 12 noon to 1 o'clock p. m.

44. A rule of the Senate shall not be altered, suspended or rescinded without a vote of a majority of

all the Senators elected; and a motion to suspend, alter or rescind any such rule, or any joint rule of the two Houses, shall not be in order, without the unanimous consent of the Senate, unless one day's previous notice thereof in writing shall be given; specifying the purpose of the proposed suspension, alteration or rescission; provided that nothing in this rule shall limit the provisions of the first and thirty-second rules.

45. Whenever a claim is referred to a committee, and the committee reports that the claim ought not to be allowed, and the report is adopted by the Senate, it shall not be in order to move to take the papers from the files for the purpose of referring them to a subsequent session, unless the claimants shall present a memorial for that purpose, stating in what manner the committee have erred in their report, or that new evidence had been discovered since the report, and setting forth the same in the memorial.

46. All resolutions calling for the expenditure of moneys must be decided by a majority vote of all the members elected to the Senate, upon a call of the roll.

47. For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 32, unless it shall appear upon an actual count by the President that a quorum is not present.

48. Persons not members of the Senate, or officers or

employees thereof, shall be admitted to the floor of the Senate only as follows:

1. The Governor, his secretary and messenger.

2. The members and Clerk of the Assembly, and clerks and messengers of the Assembly in the exercise of an official duty directly connected with the business of the Senate.

3. The elected State officers, heads of departments and their deputies.

4. Reporters of the Senate and of the Assembly designated under the rules, unless a designation theretofore given them has been revoked.

5. Ladies, and members of a Senator's family, or of the family of the President of the Senate, on the card of a Senator, or of the President of the Senate.

6. Former members of the Senate.

7. Any person not hereinbefore named may be admitted to the parlor of the Senate.

8. During the sessions of the Senate, no person other than a Senator shall occupy the chair of a Senator.

49. An officer or employee of the Senate shall not solicit subscriptions, for any purpose, from any other officer or employee thereof, nor from any Senator. Nor shall any person be permitted to solicit or receive subscriptions or contributions for any purpose on the floor, or in the lobby of the Senate.

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RULES

OF THE

ASSEMBLY OF STATE OF NEW YORK

Powers and Duties of Speaker.

1. To take the chair, call to order, and, if a quorum be present, proceed to business.

2. To preserve order, decide questions of order subject to appeal, appoint committees, except where otherwise ordered, substitute any member to perform duties of Chair, and designate reporters. Not required to vote except where his vote would be decisive. In case of disturbance may order galleries and lobby cleared. Ex-officio member and chairman Committee on Rules.

Sergeant-at-Arms.

3. Shall enforce rules subject to direction of Speaker, enforce order and exclude from floor all persons not entitled to privileges of same.

Stenographer.

4. Duties of.

Order of Business.

5. Reading and correction of Journal; general order of business; not to be departed from, except, etc.; orders of the day specified; order of business after regular orders of any day concluded; orders of the day not finished, acted upon next day.

Of Bills.

6. How introduced.

7. Private, how introduced.

8. Title of bill what to contain; bills amending codes, Greater New York Charter, chapter of Revised or Consolidated General Laws or other act having short title shall quote descriptive name of the code and may quote the short title of law and except private or local bills must contain brief reference to subject-matter of amendment; title of bill proposing amendment to other existing law must contain number of chapter of statute to be amended and year enacted with brief reference to subject-matter of proposed amendment; amendatory act must state in first section, if code amendment, descriptive name and section of Code; if Greater New York Charter, section of same as re-enacted by chapter 466, Laws 1901; if other law, section and chapter with year of enactment and title of original law and chapter and year of all amendatory acts.

9. Every bill to be printed and placed on files; in amendatory acts, when printed, new matter must be underscored, matter to be omitted bracketed; power of Speaker to cause bill to be reprinted.

10. After first reading, to be referred to committee; committee may report with or without amendment or adversely; proceedings after report.

11. Message from Senate communicating an amendment to be referred.

12. Bills on second reading subject to debate before ordered to third reading to be considered section by section; time allowed in debate; effect of ordering main question.

13. To receive three separate readings.

14. Petitions, memorials and remonstrances, how presented.

Of Resolutions.

15. Certain, to lie over one day.

16. Referring to printing extra copies, etc., to be referred to Committee on Public Printing.

17. Calling for or leading to expenditures, to be referred.

Committees and their Duties.

18. Standing committees, list of, to be appointed.

19. On Revision; duties; all bills shall be so referred prior to third reading.

20. Reports of committees; what must contain.

21. Committees shall make final reports on all matters on or before April fifth; no bills introduced after that date except messages from Senate.

Special Orders.

22. Any matter may be made a special order by assent of two-thirds; similar vote to postpone or rescind.

Committee on Rules.

23. Notice may be given to, last ten days, making any matter special order.

Motions and their Precedence.

24. When questions under consideration, no motion received, except, etc.

25. Motion to reconsider.

26. Motion to reconsider not to be reconsidered; what votes not to be reconsidered.

27. Recalling bill from the Governor for correction; vote for amendment to such bill may be taken immediately upon its return.

28. Previous question, how put; to preclude amendments or debate; "main question" amendments.

Assembly Chamber; and Admission to the Floor Thereof.

29. Use of, in control of Speaker.

30. Who may be admitted to floor of House.

31. Reporters interested in legislation excluded from floor.

Rights and Duties of Members.

32. To vote, unless excused or directly interested; what deemed bar of the House.

33. Securing presence of members.

34. Call of House to secure attendance of members.

35. When less than quorum vote Speaker to order bar of House closed and roll called; if quorum present yeas and nays to be called; contempt to refuse to vote unless purged, etc.

36. Persons before bar of House for breach of privileges; Speaker to execute judgment.

37. Persons other than officers excluded from Clerk's desk during session of House.

Order and Decorum.

38. Member to address Speaker, and be recognized by him before proceeding in debate, etc.

39. Private discourse forbidden while member is speaking.

40. Member not to speak or leave his place while question is being put, or a count being had.

41. Members to keep seats until Speaker declares House adjourned.

Order in Debate.

42. No members to speak more than twice, etc., without leave and not more than fifteen minutes without two-thirds vote.

43. When member may be called to order; to take his seat, except, etc.

44. Priority of business to be decided without debate.

45. House equally divided, question lost.

46. Division of question; motions to strike out or insert.

47. Entry of bill, order, motion, etc., on Journal; name of member introducing same to be also entered.

48. Yeas and nays, when may be taken; to be entered on Journal.

49. Roll-call on asking unanimous consent to advance bill.

50. Questions of order and decision thereon to be entered in Journal; at close of session to be printed as an appendix to Journal.

51. Request of members to be excused from voting, etc.

Miscellaneous Provisions.

52. Reporters; Clerk not to issue orders for stationery to, who are also reporters for Senate.

53. Sergeant-at-arms not to allow smoking in Assembly Chamber.

Suspension of Rules.

54. Standing rules not to be changed, suspended or rescinded, except on notice; what notice to contain and when given.

RULES.

POWERS AND DUTIES OF THE SPEAKER.

1. The Speaker shall take the chair each day at the hour to which the House shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules.

2. He shall possess the powers and perform the duties herein prescribed, viz.:

1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor.

2. He shall decide all questions of order subject to appeal to the House. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once.

3. He shall appoint all committees, except where the House shall otherwise order.

4. He may substitute any member to perform the duties of the Chair for a period not exceeding two consecutive legislative days, but for no longer period, except by special consent of the House.

5. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so

appointed, shall be entitled to such seats as the Speaker shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber.

6. He shall not be required to vote in ordinary legislative proceedings, except where his vote would be decisive.

7. He shall have general control, except as provided by rule or law, of the Assembly Chamber, lobbies and rooms and of the corridors and passages in that part of the Capitol assigned to the use of the Assembly. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the House. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending.

8. He shall be ex-officio member and chairman of the Committee on Rules.

9. The Speaker shall appoint a majority leader, who shall be a member of the Ways and Means Committee and the Committee on Rules, and who, in addition thereto, shall be a member ex-officio of all other committees of the House and entitled to the same rights and privileges as other members of said committees of which he is an ex-officio member, except the right to vote.

SERGEANT-AT-ARMS.

3. Subject to the direction of the Speaker, the Sergeant-at-Arms shall enforce the rules of the House,

enforce order in the Assembly Chamber, lobbies and rooms and exclude all persons from the floor except such as are entitled to the privileges of the same.

STENOGRAPHER.

4. It shall be the duty of the Stenographer of the Assembly to be present at every session of the House. He shall take stenographic notes of the debates in the House, and shall furnish a copy of the same, written out in long-hand, to any member applying therefor, upon the payment to said Stenographer of ten cents for each folio, which charge said Stenographer may receive in addition to his fixed compensation. The stenographic notes of the debates shall be filed with the Clerk, and shall form a portion of the archives of the House. The Clerk of the Assembly is authorized to furnish said Stenographer with proper stenographic blank books in which to record said debates, not to exceed fifty dollars for an annual session of the Legislature.

ORDER OF BUSINESS.

5. The first business of each day's session shall be the reading of the Journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business, which shall not be departed from, except by a vote of two-thirds of the members present, to be determined by a call of the roll, shall be as follows:

1. Messages from the Governor and from the Senate, communications from State officers, reports from State institutions and reports from the Committees on Revision and Printed and Engrossed Bills.

2. First reading of a bill by its title and reference of the same.

3. Reports of standing committees in their order. (See Rule 18.)

4. Reports of select committees.

After the foregoing orders have been finished, the following shall be the order of the day:

For Mondays:

1. Bills on second reading.
2. Bills on third reading.
3. Original resolutions during the months of January and February only.
4. Unfinished business (other than bills) may be considered.

For each other legislative day:

1. Bills on second reading.
2. Bills on third reading.

But messages from the Governor and Senate, communications and reports from State officers, reports from the Committee on Privileges and Elections involving the right of a member to his seat, reports from the Committee on Engrossed Bills, on Revision and on Rules shall be received at any time.

When the regular orders for any day shall be gone through the following shall be the order of business:

1. Bills on second reading.
2. Bills on third reading.

When the consideration of the orders of the day is not finished, those not acted upon shall be the orders for the next and each succeeding day until disposed of, and shall be entered first in the calendar without change in their order.

OF BILLS.

6. Concurrent resolutions proposing amendments to the Constitution of the State and concurrent resolutions proposing or ratifying amendments to the Constitution of the United States shall, for all legislative purposes, be deemed to be and be treated as bills. No bill shall be introduced in the House except in one of the following modes, viz.:

1. Bills may be deposited, at any time during the session, in a box to be known as the "bill box," which shall be under the immediate charge of the Clerk, and which shall be kept securely locked until all bills so deposited are removed by him, or by a deputy clerk authorized by him. Every bill shall be in duplicate, and both shall be indorsed with a statement of the title, accompanied by the name of the member introducing it.

At the close of each day's session one of said bills so deposited shall be handed by the Clerk to the Speaker for his examination after due record thereof has been entered in a book which shall be kept for that purpose. At the next regular session, as provided in subdivision 2 of Rule 5, the Speaker shall announce the introduction of all bills thus received by him for their first reading, and thereupon shall refer them to the appropriate committees with the consent of the House.

The other of said bills having first been entered in the record book shall, on the day of their reception, be filed by the Clerk with the Librarian of the Assembly, who shall keep a record thereof, which,

together with the bills, shall, under his supervision, be subject to public inspection during the regular office hours of the library.

2. By report of a committee.
3. By order of the House.
4. By message from the Senate.

7. No private bill shall be introduced, but upon a memorial or petition presented to the House and signed and verified by the party or parties praying for the passage of the same, except by order of the House.

8. Every bill introduced shall, by its title, briefly indicate the purpose of the proposed law.

The subject of every private or local bill shall be expressed in the title as required by section sixteen of article three of the Constitution. The titles of all bills proposing amendments to any of the codes, to the Greater New York charter, to any chapter of the revised or consolidated general laws, or to any act having a short title, shall quote the descriptive name of the code, and may quote the short title of the law, and, except in the case of private or local bills must contain some brief reference to the subject-matter of the proposed amendment.

The title of every bill proposing amendment to any existing law, other than such as is hereinafter enumerated, must contain the number of the chapter, the year in which it was enacted and the title of the statute to be amended, together with some brief reference to the subject-matter of the proposed amendment.

Every bill amending an existing law must state in the first section:

1. If a code amendment, the descriptive name and section of the code proposed to be amended.

2. If an amendment to the Greater New York charter, it shall be described as follows: "Section —— of the Greater New York charter, as re-enacted by chapter four hundred and sixty-six of the Laws of nineteen hundred and one, is hereby amended to read as follows:"

3. If any other law, the section and chapter of the statute proposed to be amended, the year of its enactment and the title of the original, together with the chapter and year of all acts amendatory thereof; provided, however, that where a bill proposes to amend more than one section of such law, each section after the first section shall refer to said chapter proposed to be amended, and shall state the chapter and year of all acts amendatory of such section.

9. Every bill, immediately upon its introduction, shall be printed and placed on the files of the members. It shall retain its original printed number, when reprinted, together with its new number, thereafter, during all stages of its progress.

Every bill amending existing law, upon its introduction, and if reprinted must, in the body of the bill, have all new matter printed in italics, and all matter to be eliminated by amendment from existing law must be printed in its proper place in the bill inclosed in black-faced brackets, and, where a bill is amended by eliminating proposed new matter such new matter shall be omitted in the reprint of the bill. Whenever it shall be called to the attention of the Speaker that any bill introduced is not drawn or printed in accordance with

the provisions of this rule, the Speaker may, in his discretion, direct the Clerk to cause such bill to be immediately amended and reprinted so as to comply therewith, and when reprinted said bill shall be restored to the place it held when such direction was given.

10. All bills, whether introduced in the House or communicated by message from the Senate, shall, after their first reading, be referred to a standing or select committee, to consider and report thereon. Such committee may report any bill, either with or without amendments, or they may report adversely to the same. All bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted, and the amendments proposed by the committee, if amending existing law, shall be printed in italics in their proper position, except in cases where the committee recommend striking out certain words from existing law, in which case such words shall be printed inclosed in blackfaced brackets. Where a committee amends a bill by eliminating proposed new matter such new matter shall be omitted in the reprint of the bill.

All bills favorably reported shall, if the report be agreed to, be placed on the order of second reading; but where a bill has been reported adversely, and such report shall be agreed to by the House, it shall be considered as rejected. Where a favorable or adverse report is disagreed to, the bill shall be before the House for disposition. No standing committee shall be discharged from the consideration of a bill referred to it, nor shall an adverse report upon a bill be received,

until, after such reference, the bill has been printed and placed upon the desks of the members and, subsequent thereto, the committee has held a meeting, or ten days shall have elapsed since the bill was placed upon the desks of the members and no meeting of the committee has been held. A standing committee shall not be discharged from the consideration of a measure except by vote of a majority of all the members elected to the Assembly.

11. Every message from the Senate communicating an amendment shall be referred to the committee which reported the measure proposed to be amended, with power to report at any time.

12. Bills on the order of second reading shall be subject to debate before the motion to order them to a third reading is entertained; such bills shall be considered section by section. After the bill has been thus read through, one-half hour shall be allowed for debate, but no person shall speak more than fifteen minutes, except by consent of the House. The main question, however, if ordered, shall be on the advancement of the bill; but when amendments are pending the question shall first be taken upon such amendments in their inverse order.

13. Every bill shall receive three separate readings, and on three different days, previous to its passage, except by unanimous consent or when made a special order.

14. Petitions, memorials and remonstrances may be presented to the Clerk at the close of each day's session.

OF RESOLUTIONS.

15. The following classes of resolutions shall lie over one day for consideration, after which they may be called up and considered, under their appropriate order of business, upon one week's notice in writing specifying the date for such consideration:

1. All concurrent resolutions, except resolutions in reference to adjournments and those recalling bills from the Governor or Senate, which shall be regarded as privileged.

2. Resolutions containing calls for information from State officers or departments.

3. Resolutions giving rise to debate, except such as relate to the disposition of matters immediately before the House, such as relate to the business of the day on which they were offered, and such as relate to adjournment or taking recess for a day.

16. All resolutions for printing extra copies of documents shall be referred to the Committee on Printing, which shall report on each resolution within seven days after such reference.

17. All other resolutions calling for or leading to expenditures shall be referred to, and reported on, by the Committee on Ways and Means, unless the House shall designate some other committee.

COMMITTEES AND THEIR DUTIES.

18. The standing committees shall be as follows, viz.:

To consist of fifteen members:

Ways and Means.

To consist each of thirteen members:

Judiciary.

Affairs of Cities.
Codes.
General Laws.
Internal Affairs.
Insurance.
Banks.
Electricity, Gas and Water Supply.
Excise.
Affairs of Villages.
Labor and Industries.
Taxation and Retrenchment.
Canals.
Railroads.
Conservation.
Penal Institutions.
Public Education.
Charitable and Religious Societies.
Public Health.
Commerce and Navigation.
Agriculture.
Revision.

To consist each of eleven members:
Public Printing.
Public Institutions.
Military Affairs.
Soldiers' Home.
Claims.

To consist each of nine members:
Privileges and Elections.

To consist of six members each:
Rules.
Printed and Engrossed Bills.

19. The Committee on Revision shall examine and correct the bills which are referred to it, for the purpose of avoiding repetitions and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the language of the existing statutes. It shall also report whether the object sought to be accomplished can be secured without a special act, under existing laws, or without detriment to the public interests, by the enactment of a general law, provided, that any change in the sense or legal effect, or any material change in construction, shall be reported to the House as a recommendation and not as an amendment. All bills other than Senate bills which have not been amended in the House shall be so referred prior to their third reading, except a bill which has been made a special order on second and third reading.

Each bill, other than Senate bills, unless otherwise ordered by the House, or endorsed as having been prepared or examined by the legislative bill drafting department, shall, before such bill is sent to the printer, be delivered by the clerk to the revision committee. The revision committee shall examine such bills and shall have the power to correct or redraft the same in accordance with the provisions of this rule and so that the same shall conform to the provisions of rules eight and nine.

20. A report of a committee must contain the name of the committee making the same, the name of the introducer of the bill or other matter reported on; the title, if a bill, with the numbers thereof and the fact

as to whether reported favorably, with or without amendments, for the consideration of the House or adversely. If the report be on a resolution, petition, memorial or remonstrance it must contain the recommendations, if any, of the committee thereon.

21. On or before the fifth day of April committees, except the committees on revision and on printed and engrossed bills, shall make final report upon matters referred to them unless further time is granted for cause, and after that date no bill shall be introduced, except by message from the Senate.

OF SPECIAL ORDERS.

22. Any matter may be made a special order for any particular day by the assent of two-thirds of the members present. When so made, a similar vote shall be requisite to rescind or postpone.

COMMITTEE ON RULES.

23. During the last ten days of the session a notice may be given requesting that any matter be made a special order, or that the rules be suspended for the purpose of reading a bill out of its order, which shall be referred, without debate, to the Committee on Rules. The member making the motion or giving the notice shall submit in writing the reasons for making such special order or suspension, and attach thereto a copy of the bill.

The committee may report at any time, and such report shall stand as the determination of the House, unless otherwise ordered by a vote of a majority of

the members elected. The committee shall not, however, report a measure, from the consideration of which a motion to discharge a standing committee has been made and lost, unless so instructed by the House by a vote of a majority of the members elected. The committee shall not be instructed by the House to report any matter as a special order or to report that the rules be suspended for the purpose of reading a bill out of its order, except by a vote of a majority of the members elected.

ON MOTIONS AND THEIR PRECEDENCE.

24. When a question shall be under consideration, no motion shall be received except as herein specified, which motions shall have precedence in the order stated, viz.:

1. For an adjournment of the House.
2. A call of the House.
3. For the previous question.
4. To lay on the table.
5. To postpone to a certain day.
6. To commit.
7. To amend.
8. To postpone indefinitely.

25. A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and except in the case of a vote on the final passage of a bill, by a member who voted in the majority, providing, however, that the vote upon the final passage of a bill recalled from the Governor, the

Senate, or a mayor of a city may be reconsidered at any time after it is returned to the House. Such motion may be made under any order of business, but shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. The motion to reconsider the vote on the final passage of any bill shall be privileged to any member, but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment or motion upon which the vote was taken shall have gone out of the possession of the House, unless subsequently recalled by a vote of the House, and in possession of the Clerk.

26. When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions:

To adjourn.
To lay on the table.
To take from the table; or
For the previous question.

27. A motion to recall a bill from the Governor for correction may be made by or on behalf of the member who introduced the bill, under any order of business, and the votes for consideration and amendment of such bill may be taken immediately upon its return.

28. The "previous question" shall be put as follows: "Shall the main question now be put?" and until it is decided, shall preclude all amendments or debate.

When, on taking the previous question, the House shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate. The "main question" shall be the advancement or passage of the bill, resolution or other matter under consideration; but when amendments are pending, the question shall first be taken upon such amendments in their order.

OF THE ASSEMBLY CHAMBER AND ADMISSION TO THE FLOOR THEREOF.

29. The use of the Assembly Chamber by bodies other than the Assembly shall be within the jurisdiction and control of the Speaker, unless otherwise ordered by the House.

30. The following classes of persons shall be entitled to admission to the floor of the House during the session thereof, viz.:

1. The Governor and Lieutenant-Governor.
2. The members of the Senate.
3. The elected State officers and their deputies.
4. Persons in the exercise of an official duty directly connected with the business of the House.
5. The reporters for the press, as provided by subdivision 5 of Rule 2.
6. Ex-Speakers of the Assembly.

No other person shall be admitted to the floor during the session, except upon the permission of the Speaker or by vote of the House; and persons so admitted shall be allowed to occupy places only in the

seats in the rear of the Assembly Chamber. All permits granted by the Speaker may be revoked by him at pleasure, or upon the order of the House.

31. No person shall be entitled to the privileges of the floor of the Assembly as a legislative reporter of a newspaper who is interested in pending or contemplated legislation, or who is employed by or receives compensation from any corporation for influencing legislation.

RIGHTS AND DUTIES OF MEMBERS.

32. Every member who shall be within the bar of the House when a question is stated from the Chair shall vote thereon, unless he is excused by the House, or unless he be directly interested in the question; nor shall the roll of absentees be more than once called. The bar of the House shall be deemed to include the entire Assembly Chamber.

33. In all cases of the absence of members during the session of the House, the members present may take such measures as they shall deem necessary to secure their presence, and in addition to suspending them from the service of the House for a given period, may inflict such censure or pecuniary penalty as they may deem just on those who, on being called on for that purpose, shall not render a sufficient excuse for their absence.

34. For the purpose of securing the attendance of members, a call of the House may be made, but such call shall not be in order after the main question has

been ordered, nor after the voting on the question has commenced, nor after the third reading of a bill has been completed. While a call of the House is in progress no other business shall be transacted except by order of the House.

35. When less than a quorum vote on any subject under the consideration of the House, it shall be in order, on motion, to close the bar of the House, whereupon the roll of members shall be called by the Clerk, and if it is ascertained that a quorum is present, either by answering to their names or by their presence in the House, the yeas and nays shall again be ordered by the Speaker, and if any member present refuses to vote, such refusal shall be deemed a contempt, and unless purged, the House may order the Sergeant-at-Arms to remove said member or members without the bar of the House, and all privileges of membership shall be refused the person or persons so offending until the contempt be duly purged.

36. Whenever any person shall be brought before the bar of the House for adjudged breach of its privileges, no debate shall be in order, but the Speaker shall proceed to execute the judgment of the House without delay or debate.

37. No person shall have access to or be permitted within or by the Clerk's desk during the session of the House, except officers of the House in the discharge of their official duties. During the sessions of the House no person other than a member shall occupy the chair of a member.

OF ORDER AND DECORUM.

38. No member rising to debate, to give notice, make a motion or report, or to present a petition or other paper, shall proceed until he shall have addressed the Speaker from his place and have been recognized by him.

39. While a member is speaking, no member shall entertain any private discourse or pass between him and the Chair.

40. While the Speaker is putting a question, or a roll call is in progress, or a count is being had, no member shall speak or leave his place.

41. When a motion to adjourn is carried, the members and officers shall keep their seats and places until the Speaker declares the House adjourned.

OF ORDER IN DEBATE.

42. No member shall speak, except in his place, nor more than twice on any question, without leave of the House. No member shall speak for more than fifteen minutes at a time except by consent of two-thirds of the members present.

43. If any member, in speaking, transgresses the rules of the House, the Speaker may call him to order, in which case the member so called to order shall immediately sit down, and shall not rise unless to explain or proceed in order.

44. All questions relating to the priority of one question or subject-matter over another, under the same order of business, shall be decided without debate.

45. When the House shall be equally divided on any question, including the Speaker's vote, the question shall be deemed to be lost.

46. If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to strike out and insert shall be indivisible.

47. In all cases where a bill, order, motion or resolution shall be entered on the Journal, the name of the member introducing or moving the same shall also be entered on the Journal.

48. The yeas and nays may be taken on any question, whenever so required by any ten members (unless a division by yeas and nays be pending), and when so taken shall be entered on the Journal.

49. In all cases where unanimous consent is asked for advancing a bill out of its order, it shall be the duty of the Speaker to order a roll-call for the purpose of determining if such consent will be granted.

50. All questions of order, as they shall occur, with the decisions thereon, shall be entered in the Journal, and, at the close of the session, a statement of all such questions and decisions shall be printed at the close of and as an appendix to the Journal.

51. Any member requesting to be excused from voting upon the final passage of a bill or upon the passage of a resolution requiring the expenditure of money, may make, when his name is called, a brief statement of the reason for making such request, not exceeding two minutes in time, and the House, without debate,

shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result.

MISCELLANEOUS PROVISIONS.

52. No reporter for the Assembly, who has an appointment as reporter in the Senate, shall receive any order for stationery from the Clerk of Assembly.

53. It shall be the duty of the Sergeant-at-Arms, at all times, to prevent smoking in the Assembly Chamber.

SUSPENSION OF THE RULES.

54. No standing rule or order of the House shall be changed, suspended or rescinded unless one day's notice shall have been given of the motion therefor; nor shall such change be made unless by a vote of a majority of all the members elected to the Assembly; any such rule, or order, however, may be suspended by unanimous consent. But such notice shall not be necessary on the last day of the session. The notice and motion shall, in all cases, state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein.

Such notice shall be given and such motion made under the order of business in which the matter proposed to be advanced by the suspension shall stand.

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JOINT RULES

OF THE

SENATE AND ASSEMBLY.

Adopted January 26, 1909.

Rule 1. It shall be in the power of either house to amend any amendment made by the other to any bill or resolution.

Rule 2. In every case of difference between the two houses, upon any subject of legislation, either house may request a conference and appoint a committee for that purpose, and the other shall also appoint a committee to confer. The committee shall meet at such hour and place as shall be appointed by the chairman of the committee on the part of the house requesting such conference. The committee shall report in writing, and shall be authorized to report such modifications or amendments as they think advisable. But no committee on conference shall consider or report on any matter except those directly at issue between the two houses. The papers shall be left with the conferees of the house assenting to such conference, and they shall present the report of the committee to their

house. When such house shall have acted thereon, it shall transmit the same, and the papers relating thereto, to the other, with a message certifying its action thereon. Every report of a committee of conference shall be read through, in each house, before a vote is taken on the same.

Rule 3. It shall be in order for either house to recede from any subject matter of difference existing between the two houses at any time previous to conference, whether the papers on which such difference arose are before the house receding, formally or informally; and on such vote to recede the same number shall be required to constitute a quorum to act thereon, and to assent to such receding, as was required on the original question out of which the difference arose.

Rule 4. In case of a failure of the conferees to agree, a report of such agreement may be made and a further conference may be had, either by the same or new committees appointed for such purpose. After each house shall have refused conference and shall have adhered to their disagreement, the bill which is the subject of difference shall be deemed lost, and shall not be again revived during the same session in either house.

Rule 5. All joint committees of the two houses, and all committees of conference, shall consist of three Senators and five members of Assembly, unless otherwise specially ordered by concurrent resolution, and in voting, all questions shall be determined by the vote of the committee of each house taken separately.

Rule 6. Whenever there shall be an election of officers by the joint action of the two houses, the result shall be certified by the president of the Senate and speaker of the Assembly, and shall be reported by the presiding officer of each house to their respective houses, and be entered on the journals of each, and shall be communicated to such official as the law may require by the clerks of the two houses.

THE CONSTITUTION

OF THE

STATE OF NEW YORK

AS

Proposed by the Constitutional Convention, September 29, 1894, at Albany, N. Y., and Adopted by the People of the State, November 6, 1894.*

[In force on January 1, 1911.]

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4. Habeas corpus.
5. Excessive bail and fines.
6. Bill of rights.
7. Compensation for taking private property; private roads; drainage of agricultural lands.
8. Freedom of speech and press; criminal prosecutions for libel.
9. Right to assemble and petition; divorces; lotteries, pool-selling and gambling, laws to prevent.

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§ 10. Escheats.
11. Feudal tenures abolished.
12. Allodial tenures.
13. Leases of agricultural lands.
14. Fines and quarter-sales abolished.
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17. Grants of land made by the king of Great Britain since 1775; prior grants.
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Preamble. We, the people of the State of New York, grateful to Almighty God for our freedom, in order to secure its blessing, do establish this Constitution.

GENERAL PRINCIPLES OF CONSTITUTIONAL CONSTRUCTION.

A constitution is an instrument of government made and adopted by the people for practical purposes connected with the common business and wants of human life. (People v. N. Y. C. R. R. Co., 24 N. Y. 485; McKoan v. Deveries, 3 Barb. 196.)

The meaning of the words in a constitutional provision is to be reached in two ways: first, by ascertaining what the framers desired to guard against by the provision; and, second, by ascertaining the meaning of the words when applied to a statute by writers and courts. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 14.)

A constitution should be so construed as best to promote the great objects for which it was made; avoiding the two extremes of a liberal or strict construction. (North River Steamboat Co. v. Livingston, 3 Cow. 713, 750.)

In construing a constitutional provision, its history and the conditions and circumstances attending its adoption must be considered. (Sweet v. City of Syracuse, 129 N. Y. 316.)

The rule of statutory interference with vested rights has but little, if any, application to the construction of the constitution. (Matter of Lee & Co.'s Bank, 21 N. Y. 9.)

The same rules of construction which are applicable to statutes govern in constitutional interpretation. (Matter of New York District Railway, 42 Hun, 621; affd., 107 N. Y. 42.)

In construing the language of a constitution the courts have nothing to do with the arguments ab inconvenienti. (People v. Morrell, 21 Wend. 563; Newell v. People, 7 N. Y. 9, 109.)

A constitutional provision should not be so construed as to work a public mischief, unless its language is such that no other course is open to the court. (People ex rel. v. Lorillard, 135 N. Y. 285, citing Smith v. People, 47 id. 330; People ex rel. v. Potter, id. 375; People ex rel. v. Angle, 109 id. 564.)

The terms of a written constitution if plain, clear and unambiguous, conveying a distinct meaning, will not be extended by implication. (Settle v. Van Evrea, 49 N. Y. 280.)

In giving construction to a constitutional provision the whole provision is to be considered, and the real intent should prevail over the strict letter, but that intent must be gathered from the language, unless this would lead to

palpable injustice, contradiction or absurdity. (Adams v. East River Savings Inst., 136 N. Y. 52, aff'g 47 State Rep. 175.)

Constitutions should be so construed as to give effect to every part thereof and leave each part some office to perform; to deprive any part of effect and meaning when it is susceptible of a different interpretation is unauthorized. (People ex rel. v. Angle, 109 N. Y. 564; Cooley's Const. Lim., p. 72.)

In construing a constitutional provision the intent of the enactment must prevail over the latter thereof. (People ex rel. v. Lorillard, 135 N. Y. 285; People ex rel. v. Potter, 47 id. 375.)

Greater care and caution should be used in adding words to or striking them from the constitution than if the provisions were contained in a statute. (People ex rel. v. Wemple, 125 N. Y. 485.)

The constant and uniform construction of a constitutional provision by every department of the state government will have great, if not controlling weight, upon its interpretation, and almost the force of a judicial exposition. (People v. Home Ins. Co., 92 N. Y. 328, 337; People ex rel. v. Williams, 55 id. 367; People v. Supervisors of Orange, 17 id. 235.)

It must be assumed that the legislature and all other public bodies intrusted with the functions of government will use the power conferred by the constitution or the law fairly and in the public interests. (Clark v. State, 142 N. Y. 101.)

Statutes are presumed constitutional, and a court will only declare them void in a clear case. (Roosevelt v. Goddard, 52 Barb. 533; People ex rel v. Durston, 119 N. Y. 569; Sweet v. City of Syracuse, 129 id. 316; People ex rel. v. Rice, 135 id. 484.)

A statute evading the terms, or the necessary implied purposes of a constitution is as clearly void as if forbidden in express terms. (People v. Albertson, 55 N. Y. 50.)

A statute cannot be declared unconstitutional or defective where it may be completely executed. (People ex rel. v. City of Rochester, 50 N. Y. 525.)

The constitutionality of a statute is to be tested not by what has been done under it, but by what may by its authority be done. (Stuart v. Palmer, 74 N. Y. 183; Matter of South Market Street, 67 Hun, 594.)

Actual and material injury must exist to warrant a court in declaring a statute unconstitutional. (People v. Canal Board, 55 N. Y. 390.)

The question of constitutionality should be determined by the language and general scope of the statute, and not by independent inquiries as to facts outside of the provisions of the statute itself. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.) And if it cannot be made to appear by argument deduced from the language of the law itself or from matters of which the court can take judicial notice that the act is unconstitutional, it must stand. (People ex rel. v. Durston, 119 N. Y. 569.)

A court should not pass upon the constitutionality of a statute unless necessary to a decision in a cause. (Frees v. Ford, 6 N. Y. 176; People v. Crissey, 91 id. 616; People v. Brooklyn, 89 id. 75; Demarest v. Mayor, 147 id. 207 [1895]; People v. Brooklyn, F. & C. I. R. Co., 89 id. 93 [1882]; People ex rel. Simpson v. Wills, 181 id. 252 [1905].)

Nor should a court declare a statute unconstitutional unless required by the most cogent reasons, or compelled by unanswerable grounds. (People v. Budd, 117 N. Y. 13.)

The language of the statute must comply with the constitution in substance and form. (People v. Allen, 42 N. Y. 404.)

The general rule is that where a part of a statute is in conflict with the constitution, and that part is entirely separable from the residue, so that the other portion of it can be enforced without any reference to the former, the unconstitutional part only will be condemned. (Wynehamer v. People, 13 N. Y. 378, 441; Matter of De Vaene, 31 How. Pr. 289.)

Before a statute can be declared unconstitutional, it must be shown to be in direct conflict with the constitution. (Morris v. People, 3 Denio, 331; Grant v. Courter, 24 Barb. 232.)

The courts should not imply a conflict between a statute and the constitution. (Cochran v. Van Surlay, 20 Wend. 383; Newell v. People, 7 N. Y. 109.)

When a statute and the constitution can be so construed as to enable both to stand, it is the duty of the court to give them that construction. (Sweet v. City of Syracuse, 129 N. Y. 316; People ex rel. v. Terry, 108 id. 1.)

Every presumption is in favor of the constitutionality of a statute. (Fort v. Cummings, 90 Hun, 481.) (1895.)

A statute must be viewed with reference to what could be done under it, and not what actually was done. (Coxe v. State, 144 N. Y. 396.) (1895.)

The constitutionality of an act is not to be determined by what has been done under it in any particular instance, but what may be done under it by virtue of its authority. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

Where a portion of a statute may be carried into effect without the aid of the remainder, it may be upheld, although the remainder is unconstitutional. (Matter of Oneida Street, 37 App. Div. 266.) (1899.)

The rule of construction that a law is not retroactive, unless clearly expressed or intended by the enacting power, applies to constitutional provisions. (O'Reilly v. Utah, Nevada, etc., Stage Co., 87 Hun, 406.) (1895.)

The proceedings of the convention in which the constitution was framed may be examined in considering the purpose of a given article or section. (Goedel v. Palmer, 15 App. Div. 86.) (1897.)

Where in a new constitution, an article relating to the same subject-matter embraced in a provision of the former constitution which has received judicial construction, is phrased in different language or qualified, it is presumed that the effect of the construction placed upon the former provision is intended to be avoided. (Matter of Smith, 90 Hun, 568.) (1895.)

A statute will be construed to be prospective unless the intention of the legislature to give it a retroactive effect is expressed in language clear and expressed so that no reasonable doubt exists in respect thereto. (Persons v. Gardner, 42 App. Div. 490.) (1899.)

A special and local statute providing for a particular case or class of cases is not repealed by a subsequent statute general in its terms, provisions and obligation, unless by the language used the intent to repeal or alter is manifest,

although the terms of the general act are broad enough to include the cases embraced in the special law and ordinarily an express repeal by some intelligible reference to the special act is necessary to accomplish that end. (People v. Keller, 35 App. Div. 493.) (1898.)

The provision confirming contracts made by the board of improvement if unconstitutional is so independent as not to render void the provision allowing the extending of the original contract. (Parfitt v. Ferguson, 159 N. Y. 111.) (1899.)

A statute which is unconstitutional so far as it purports to operate retrospectively may be upheld as to future cases. (Purdy v. Erie R. R. Co., 162 N. Y. 42.) (1900.)

Public grants are to be construed strictly so as to prevent rights from being taken except those which the words of the grant by their ordinary construction convey. (Skaneateles W. W. Co. v. Skaneateles, 161 N. Y. 154.) (1900.)

Actual and material injury must exist to warrant a court in declaring a statute unconstitutional. A court should not pass upon such constitutionality unless necessary to a decision in the cause nor unless required by the most cogent reasons or compelled by unanswerable grounds. (Matter of Fuller, 62 App. Div. 428.) (1901.)

Every presumption is in favor of the constitutionality of a statute and when it and the constitution cannot be construed so as to enable it to stand it is the duty of the court to give that construction. Where the unconstitutional part of a statute can be separated from the residue so that the latter may be enforced without reference to the former the part in conflict with the constitution will alone be declared void. (Matter of Fuller, 62 App. Div. 428.) (1901.)

The court of appeals will not consider the constitutionality of an act imposing a penalty when the question was not raised at the time of the trial as it must be deemed to have been waived. (Dodge v. Cornelius, 168 N. Y. 242.) (1901.) (Matter of Anderson, 178 N. Y. 416.) (1904.)

The constitutional validity of a law is to be tested not by what has been done under it but what it authorizes to be done. (Williams v. Village of Port Chester, 72 App. Div. 505.) (1902.)

The meaning of words in a constitutional provision is to be reached in two ways: First, by ascertaining what the framers desired to guard against by the provision; second, by ascertaining the meaning of the words when applied to

a statute by writers and courts. (McGrath v. Grout, 69 App. Div. 316.) (1902.)

Every presumption is in favor of the constitutionality of a statute and if the statute and the act can be reasonably construed so as to enable the latter to stand, it is the duty of the courts to give that construction; still it is none the less their duty to adjudge the statute void if it is in plain conflict with the real intent of the fundamental law, when considered in the light of history and in all its aspects. (People ex rel. Met. St. Ry. Co. v. Tax Com'rs, 174 N. Y. 417.) (1903.)

In determining the constitutionality of an act the court, except in extraordinary circumstances, is limited to a construction of the law itself construed in the light of the facts of which the court can take judicial notice. (Tenement House Department v. Moeschen, 89 App. Div. 526.) (1904.)

In its inquiry as to whether an improvement authorized by statute is for a purpose which is public or one merely private or local the court is confined to matters appearing on face of the bill itself and to things that are the subject of judicial notice. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

The constitutionality of a statute will not be considered by the court of appeals unless the question is raised below. (Matter of Anderson, 178 N. Y. 416.) (1904.)

The constitutionality of a statute will not be determined except on presentation of a case in which a determination in unavoidable. (People ex rel. Simpson v. Wills, 181 N. Y. 252.) (1905.)

The constitutionality of an act of the Legislature should be presumed except where the invalidity of the act is apparent on its face. (Matter of Thornburgh, 72 Misc. 619.) (1911.)

ARTICLE 1.

Persons not to be disfranchised.—Section 1. No member of this State shall be disfranchised, or deprived of any of the rights and privileges secured to any citizen thereof, unless by the law of the land, or the judgment of his peers.

[Section 1 of article 1 of the amended constitution of 1846, without change.]

A law affecting any rights of an individual can only be questioned as to constitutionality by the individual affected.

(Sinclair v. Jackson, 8 Cow. 578; Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.) "Law of the land" does not mean the act of legislature which deprives the citizen of his rights, privileges or property. (Wynehamer v. People, 13 N. Y. 393 et seq., which is a leading case as to the meaning of "law of the land," and "due process of law." See also Taylor v. Porter, 4 Hill, 140; White v. White, 5 Barb. 474; People v. Toynbee, 20 id. 168, 198; Green v. Shumway, 39 N. Y. 426; Bowe v. U. S. Reflector Co., 36 Hun, 410.)

Statute providing for courts-martial not in conflict with this section. (People ex rel. v. Daniell, 50 N. Y. 274, 280.)

The provisions of this section do not take away the legislature's power of taxation. (Town of Guilford v. Supervisors, 13 N. Y. 143; People v. Supervisors of Ulster Co., 36 Hun, 491, 496.)

Section 383 of the Penal Code prohibiting the exclusion of colored persons from places of amusement not in conflict with this section. (People v. King, 42 Hun, 186; affd., 110 N. Y. 418.)

The sovereign power may regulate the use of one's property with reference to the public welfare. (Id.)

The right to liberty secured to the citizen by constitutional prohibition includes the right to adopt and follow such lawful individual pursuits, not injurious to the community, as he may see fit. Principle applied to statute prohibiting manufacture of oleomargarine, etc. (People v. Marx, 99 N. Y. 377.)

Section 292 of the Penal Code prohibiting employment or exhibition of child under fourteen years as a dancer, is not contrary to this section. (People v. Ewes, 47 St. Rep. 501; S. C., 141 N. Y. 129; as to § 713 of Penal Code, see People ex rel. Zeese v. Maston, 79 Hun, 580.)

The provision permitting the formation of a state commission from one political party is not in violation of the constitution. (Rogers v. Common Council of Buffalo, 123 N. Y. 173, 181.)

Rights of citizens are not abridged by law providing for eight hours labor as in Laws 1891, chapter 105, title 24, section 504. (People v. Warren, 77 Hun, 120.)

As to constitutionality of section 873 of Code of Civil Pro-

cedure providing for examination of person of plaintiff in personal injury cases. (Lyon v. Man. R. Co., 142 N. Y. 298.)

Ticket brokerage act, held unconstitutional as violative of the constitutional guarantees of civil rights and privileges and of liberty. (People ex rel. Tyroler v. Warden, 157 N. Y. 116.) (1898.)

The citizen has no absolute right to the secrecy of his papers. The right guaranteed is not against all searches and seizures but against unreasonable ones. (People v. Coombs, 36 App. Div. 284.) (1899.) (Affd., 158 N. Y. 532.)

The right to appeal is not a constitutional right. Where it does exist it is simply the continuance of an existing practice by the constitution subject to the legislative right to curtail or abolish it or is founded on some statute. (People v. Rutherford, 47 App. Div. 209.) (1900.)

Query. Whether a statute imposing a penalty upon a witness to a will who omits to write down his residence opposite his name is unconstitutional. (Dodge v. Cornelius, 168 N. Y. 242.) (1901.)

Query. As to validity of provision of side path law limiting the use of side path to licensed bicycle owners. (Ryan v. Preston, 59 App. Div. 97.) (1901.)

A corporation is not a citizen of the state in a constitutional sense. (Anglo-American Provision Co. v. Davis Provision Co., 169 N. Y. 506.) (1902.)

An act prohibiting a person receiving a pension from a city from holding any office under the city unconstitutional. (People v. Woodbury, 38 Misc. 189.) (1902.)

Provision of labor law as to hours of employment of bakers held constitutional. (People v. Lochner, 73 App. Div. 120.) (1902.)

Section 351, Penal Code prohibiting the keeping of a place for making, recording and registering bets and wagers does not establish two different punishments for the same offense. (People v. Stedeker, 75 App. Div. 449.) (People v. De Bragge, 73 App. Div. 579.) (1902.)

Section 687a, Penal Code, providing for indeterminate sentences constitutional. (People v. Warden of Sing Sing, 39 Misc. 113.) (1902.)

The rule of the New York fire department forbidding member of the force of being member of any political club or association intended to affect legislation concerning fire

department does not abridge his right as citizen. (People v. Scannell, 74 App. Div. 406.) (1902.)

A school district cannot maintain an action to have a statute transferring a portion of its territory to another district, declared unconstitutional as the only persons interested in the determination of that question are taxpayers and creditors and it is not a real party in interest. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

A party may waive a rule of law or a statute or even a constitutional provision enacted for his benefit or protection where it is exclusively a matter of private right and no consideration of public morals is involved and having done so he cannot subsequently invoke its protection. In a negligence action where the plaintiff has been examined by the defendant's physicians, who have testified without objection, the defendant cannot ask the court to permit a new examination. (Whitaker v. Staten Island M. R. R. Co., 76 App. Div. 351.) (1902.)

A holder of a liquor tax certificate who, in a proceeding for the cancellation thereof, interposes a verified answer waives his constitutional right to refuse to answer under oath. (Matter of Cullinan, 76 App. Div. 362.) (1902.)

Section 344b of the Penal Code providing that the possession of policy slips is presumptive evidence of the possession knowingly thereof is constitutional. (People v. Adams, 176 N. Y. 351.) (1903.)

The provision of sanitary code of New York city requiring a person desiring to sell milk to obtain a permit of the board of health, held constitutional. (People v. Vandecarr, 175 N. Y. 440.) (1903.)

Query. Whether the Legislature has power to make the breach of a civil contract a criminal offense. (People v. Orange County Road Construction Co., 175 N. Y. 84.) (1903.)

In determining the reasonableness of a statute the court is at liberty to consider the established usages, customs and traditions of the people and to have in view the promotion of their comfort and the preservation of the public peace and good order. (Grossman v. Caminez, 79 App. Div. 15.) (1903.)

Provisions of the Penal Code requiring an agent to obtain written authority to sell real estate held unconstitutional. (Grossman v. Caminez, 79 App. Div. 15; Cody v. Dempsey, 86 App. Div. 335.) (1903.) (Fisher Co. v. Woods, 187 N. Y. 90.) (1907.) (Contra, Whiteley v. Terry, 83 App. Div. 197.) (1903.)

Provision of New York charter for discharge of prisoner convicted of vagrancy held constitutional. (People ex rel. Abrams v. Fox, 77 App. Div. 245.) (1903.)

The courts have power to set aside indictments whenever it has been made to appear that they have been founded upon illegal and incompetent testimony. This power is based upon the inherent right and duty of the courts to protect the citizen in his constitutional prerogative and to prevent oppression or persecution. It is a power which the Legislature can neither curtail or abolish.

A motion may be entertained to dismiss an indictment on grounds other than those specified in section 313 of the Code of Criminal Procedure. (People v. Glen, 173 N. Y. 395.) (1903.)

Provisions of public health law prohibiting children from attending school unless they have been vaccinated held to be a reasonable regulation and constitutional. (Matter of Viemeister v. White, 88 App. Div. 44.) (1903.)

The legislature is vested with absolute power of taxation, subject only to the limitation that the burden of taxation shall be uniform and equal over all. Tax upon rents reserved in perpetual lease constitutional. (Woodruff v. Oswego Starch Factory, 177 N. Y. 23.) (1903.)

Under Employers' Liability Act a complaint which states a cause of action good at common law is not demurrable because it fails to allege that the employee served upon the employer the notice required by the act. The statute requires the service of a notice only where the plaintiff seeks to enforce a cause of action which did not exist at common law and was conferred by statute, otherwise it would be unconstitutional. (Rosin v. Lidgerwood Mfg. Co., 89 App. Div. 245.) (1903.)

The right to be appointed to a nonelective municipal office is only a privilege, and a state may pass laws to regulate the privileges and immunities of its own citizens provided that in so doing it does not abridge their privileges and

immunities as citizens of the United States. It can limit the right of appointing officers to remove their appointees. (People ex rel. Kenney v. Folks, 89 App. Div. 171.) (1903.)

The provisions of the highway law providing for the registration of automobiles are not invalid as class legislation. (People v. MacWilliams, 91 App. Div. 176.) (1904.)

By-laws of a membership corporation which seek to compel a member to give up, under penalty of expulsion, the free exercise of his rights of suffrage, - conflict with the constitution. (Stein v. Marks, 44 Misc. Rep. 140.) (1904.)

The presumption that a defendant in a criminal action is innocent survives the finding of an indictment until the rendering of a verdict of guilty. To the rendering of that verdict the accused cannot lawfully be subjected by the police authorities to the outrage of having his photograph taken for place in the "Rogues Gallery." Nevertheless, in the absence of statutory authority a writ of mandamus cannot issue to compel the destruction of such photograph. (People ex rel. Gow v. Bingham, et al., 57 Misc. 66.)

Section 640-d of the Penal Code (added by chapter 128, L. of 1901) which provides that "In cities of the first and second class any person who shall offer for sale any real property without the written authority of the owner of such property * * * shall be guilty of a misdemeanor," is an improper and unreasonable exercise of the police powers of the state, and is a violation of the federal and state constitutions. (U. S. Constitution, Art. 1, Sec. 10, and 14th amendment; N. Y. Constitution, Art. 1, Sec. 1 and 6. Fisher Co. v. Woods, 197 N. Y. 90, reversing 110 App. Div. 890.)

Section 171-a, of the Penal Code, in so far as it prohibits a natural person from entering into a contract which binds his employees not to join a labor organization, is unconstitutional. (People v. Marcus, 110 App. Div. 255.) (1905.) (Affd., 185 N. Y. 257.)

Chapter 528 of the Laws of 1902 making the sale of merchandise in bulk fraudulent and void as to creditors unless certain conditions are complied with is unconstitutional. (Wright v. Hart, 182 N. Y. 330.) (1905.)

Non-compliance with labor law (L. 1897, chap. 415, § 3, as amended by L. 1899, Ch. 567) as to hours of labor is no defense to mandamus to compel payment of amount due on municipal contract, since such provision is in violation of the state constitution with respect to the rights of a municipality. (The People ex rel. Cassey v. Grout, 179 N. Y. 417.) (1904.)

A person made defendant in an action to compel the registration of lands under article 12 of the Real Property Law, merely as an owner of contiguous property whose rights are not in any way affected, cannot attack the constitutionality of the act. (Marvin Realty Co. v. Barre, 142 App. Div. 4.) (1910.)

Trial by jury.—§ 2. The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever; but a jury trial may be waived by the parties in all civil cases in the manner to be prescribed by law.

[Section 2 of article I of the amended constitution of 1846, without change.]

The expression "in all cases in which it has been heretofore used" is generic. It does not limit the right to the mere instances in which it has been used, but extends it to such new and like cases as might afterward arise. (Wynehamer v. People, 13 N. Y. 426.) The word "heretofore" in this clause means before 1846, and cannot be carried back to 1777 and confined to cases which at that early period were triable by a jury. (Id. 427. See also Riggs v. Shannon, 27 Abb. N. C. 456.) Such jury must be a jury of twelve men. (Id. 427; People ex rel. v. Justices, 74 N. Y. 406.)

Act creating special session for trial of petit larceny without a jury is constitutional. (Murphy v. People, 2 Cow. 815.)

Constitutional provision does not apply to the petty offenses triable before a court of special sessions. (People ex rel. v. Justices, 74 N. Y. 406.)

Right to trial by jury has no reference to proceedings intended merely to prevent the commission of offenses. (Duffy v. People, 1 Hill, 355; S. C., 6 id. 75.)

Nor does it apply to special proceedings for removal of tenants. (Roberts v. Cone, 3 Abb. L. J. 151.) Nor to a proceeding for determining whether a license should not be revoked for violation of law. (People ex rel. v. Commis-

sioners of Police of Brooklyn, 59 N. Y. 92.) Nor to imprisoning for nonpayment of costs. (Standacher v. Webb, 16 Hun, 42.) Nor to a summary proceeding for judgment on a recognizance. (People v. Quigg, 59 N. Y. 83.)

Legislature cannot take the right away by classing among disorderly persons those who are entitled to a jury trial. (People ex rel. v. Baird, 4 Weekly Dig. 576.)

Act of legislature not unconstitutional because it allows title to land to be tried in an action of partition; party desiring jury trial may have it by issues sent to circuit for trial. (Ward v. Ward, 23 Hun, 431.)

The provision of the constitution relative to trial by jury relates to the trial of issues of fact, in civil and criminal proceedings, and has no relation to assessments for damages for property taken for a public purpose. (Livingston v. Mayor of New York, 8 Wend. 85; Matter of Newell Smith, 10 id. 449; People ex rel. Herrick v. Smith, 21 N. Y. 595; Astor v. Mayor, 62 id. 580.)

The trial by jury is preserved by the constitution in all cases in which it had been used prior to its adoption. But in controversies cognizable in courts of equity a jury trial was never, in general, resorted to. (Matter of the Empire City Bank, 18 N. Y. 199, 210; Sands v. Kimbark, 27 id. 147; Hudson v. Caryl, 44 id. 553, 555.)

The lien law of 1862, relating to liens upon vessels, is not unconstitutional as infringing upon the right of trial by jury. (Sheppard v. Steele, 43 N. Y. 52.) As to constitutionality of mechanics' lien law, see Schillinger Fire Proof Cement Co. v. Arnott, 14 N. Y. Supp. 326.

In an action to abate a nuisance, a jury trial is a matter of right. (Hudson v. Caryl, 44 N. Y. 553.)

The circumstance of the question involved being one of facts does not of itself give a right to a trial by jury. (McKeon v. See, 51 N. Y. 300.) If request for jury be not founded on tenable ground, even if right existed, the court would not err in refusing request. (Id.)

Waiver of trial by jury may be adjudged upon any evidence which would be sufficient to constitute a waiver of rights in other cases. (Baird v. Mayor, 74 N. Y. 382; Powell v. Waldron, 89 id. 328; Hund v. Kennedy, 83 id. 149.)

Act providing summary trial and punishment of public

intoxication by magistrate is not repugnant to this section (People v. Burleigh, 1 Crim. R. 522.)

In an equitable action a trial by jury is not a matter of right; it rests in the discretion of the court. (Knickerbocker Life Insurance Co. v. Nelson, 8 Hun, 21; Cushman v. Thayer Mfg. Co., 76 N. Y. 365.)

Defendant cannot be deprived of constitutional right to trial by jury because plaintiff demands equitable relief. (Libman v. Manhattan El. R. R. Co., 26 Abb. N. C. 423; S. C., 59 Hun, 428.)

For recent decisions as to the right of trial by jury, see Colon v. Lisk, 153 N. Y. 188 (1897); Buttling v. Hatton, 18 App. Div. 128 (1897); Schillinger v. Arnott, 152 N. Y. 584 (1897).

An act which merely regulates the mode of securing a common-law jury is not violative of the right of trial by jury. (People v. Dunn, 157 N. Y. 528.) (1898.)

An act providing for a special jury in criminal cases and for the mode of selecting the same and creating a special jury commissioner is not violative of this section. The constitution does not secure to the defendant any particular mode of jury trial nor any particular method of jury selection. It secures simply the right of a trial by a common-law jury of twelve men. The right to peremptory challenges may be granted or withheld at the legislative will. The legislature may regulate the mode of selecting and procuring grand jurors. (People v. Dunn, 157 N. Y. 528.) (1899.)

The provision in the United States constitution that "in all criminal prosecutions the accused shall enjoy the right of a speedy and public trial by an impartial jury" applies to the United States courts only. (People v. Hall, 51 App. Div. 57.) (1900.) (Affd., 169 N. Y. 184.)

The accused is not denied his constitutional right to a trial by a common-law jury because jurors are selected from the general panel after the exclusion therefrom of competent jurors by the commissioner of jurors for the purpose of making up a special jury list. (People v. Meyer, 162 N. Y. 357.) (1900.)

The holder of a liquor tax certificate is not entitled to a trial by jury before he can be deprived thereof. (Matter of Lyman, 46 App. Div. 387.) (1899.)

Provisions of an act authorizing a comparison of disputed handwriting with other writing proved to the satisfaction of the court to be genuine leaves the ultimate determination of the genuineness of the handwriting in question with the jury and is, therefore, constitutional. (People v. Molineux, 168 N. Y. 264.) (1901.)

Anti-policy law constitutional. (Wilson v. Flynn, 72 App. Div. 67.) (1902.)

The provision that trial by jury shall remain inviolate does not apply to the trial of misdemeanors by courts of special sessions and justices' courts. (People v. Brady, 37 Misc. 126.) (1902.)

The property right of the owner of a liquor tax certificate is a limited right not protected by the constitutional requirement of a jury trial. (Matter of Cullinan, 76 App. Div. 362.) (1903.)

The right to successive jury trials in an action of ejectment is not an absolute one but is a matter of procedure, subject to change by the legislature. (Satterlee v. Kobbe, 173 N. Y. 691.) (1903.)

In an action at law the court has no power against the objection of either party to discharge the jury and in their absence pass upon the question of fact. The constitution guarantees to either party the right to have the question of fact passed upon by the jury. (Gansberg v. Sagemohl, 67 App. Div. 554.) (1902.)

In a common-law action brought by an executor or administrator a compulsory reference should not be ordered unless it clearly appears that the trial will necessarily involve the examination of a long account. If other independent issues are raised by the pleadings they should be first tried by a jury and a reference then ordered to determine those involving examination of long account. (Malone v. Sts. Peter & Paul's Church, 172 N. Y. 269.) (1902.)

When a canvass has been completed, under the statutory provisions for its conduct existing at the trial, the legislature cannot create a new tribunal with power to recanvass the election and to award possession of the office to another claimant. The right to hold office may be questioned in an action of quo warranto, in which a jury may be invoked as one of those cases in which a jury trial has heretofore been used. (Matter of Metz v. Maddox, 189 N. Y. 460.) (1907.) (120 App. Div. 814 and 120 id. 147, revd.)

The provisions of section 1410 of Greater New York

charter dispensing with a jury trial is not unconstitutional. (People v. Stein, 80 App. Div. 357; People ex rel. Burns v. Flaherty, 119 id. 462.) (1907.)

There is a place somewhere, where the spirit of the constitutional guarantee, that "The trial by jury in all cases in which it has been heretofore used shall remain inviolate forever" requires that the verdict of a jury shall be final, and where there have been a sufficient number of trials, under fair conditions, so that it cannot be presumed that the jury has been under the control of passion, corruption or other improper motives, or has failed to give the evidence proper consideration, it is the duty of the court to give effect to the verdict and to end the litigation. (Ridgely v. Taylor & Co., 126 App. Div. 303.) (1908.)

Freedom of worship; religious liberty.—§ 3. The free exercise and enjoyment of religious profession and worship, without discrimination or preference, shall forever be allowed in this State to all mankind; and no person shall be rendered incompetent to be a witness on account of his opinions on matters of religious belief; but the liberty of conscience hereby secured shall not be so construed as to excuse acts of licentiousness, or justify practices inconsistent with the peace or safety of this State.

[Section 3 of article I of the constitution of 1846, without change.]

This section does not shield a witness from cross-examination as to his religious belief. (Stanbro v. Hopkins, 28 Barb. 265.)

A statute which prevents theatrical entertainments on Sunday is valid. (Lindenmuller v. People, 33 Barb. 548; Neundorff v. Duryea, 69 N. Y. 557; People v. Hoynn, 20 How. Pr. 76.)

A prosecution under section 288 of the Penal Code for failure to furnish necessary medical attendance to a child against a person who belongs to a religious society which does not believe in physicians and believes that the child will be cured through the medium of prayer is not in violation of this section, since practices inconsistent with the peace and safety of the state and the protection of the lives and health of its inhabitants are properly punishable. (People v. Pierson, 176 N. Y. 201.) (1903.)

Section 267 of the Penal Code is not unconstitutional as involving interference with religious liberty. (Silverberg v. Douglass, 62 Misc. Rep. 340.) (1909.)

Section 265 of the Penal Code does not prohibit indoor exhibition of moving pictures on Sunday. (People v. Hemleb, 127 App. Div. 356.) (1908.)

Habeas corpus.— § 4. The privilege of the writ of habeas corpus shall not be suspended, unless when, in cases of rebellion or invasion, the public safety may require its suspension.

[Section 4 of article I of the amended constitution of 1846, without change.]

The legislature cannot commit a person for contempt and then forbid all inquiry into the rightful exercise of that power, for this would take away the benefit of the writ of habeas corpus. (People ex rel. McDonald v. Keeler, 32 Hun, 563; S. C., 99 N. Y. 463.)

Excessive bail and fines.— § 5. Excessive bail shall not be required nor excessive fines imposed, nor shall cruel and unusual punishments be inflicted, nor shall witnesses be unreasonably detained.

[Section 1 of article V of the amended constitution of 1846 without change.]

The following is a history of the constitutional provision against cruel and unusual punishment found in the case of Matter of Bayard, 25 Hun, 546, opinion of Rumsey, J.: "We first find the injunction against cruel and unusual punishment in the Declaration of Rights, presented by the convention to William and Mary before settling the crown upon them in 1688. That declaration recites the crimes and errors which had made the revolution necessary. These recitals consist of the acts only of the former king and the judges appointed by him, and one of them was that illegal and cruel punishment had been inflicted. (Stephen's Eng. Const. 44.) The punishments complained of were the pillories, slittings and mutilations which the corrupt judges of King James had inflicted without warrant of law, and the declaration was aimed at the acts of the executive, for the judges appointed by him, and removable at pleasure, were practically part of the executive. It clearly did not then refer to the degree of punishment, for the criminal law of England was at that time disgraced by the infliction of the very gravest punishment for slight offenses, even petit larceny then being punishable with death. But the declaration was intended to forbid the imposition of punishment of a kind not known to the law, or not warranted by the law."

The provision as to excessive bail only applies to criminal actions. (People v. Tweed, 13 Abb. [N. S.] 148.)

While the legislature has established a general maximum punishment throughout the state for a crime, it may change or increase the punishment as to particular localities. (Matter of Bayard, 25 Hun, 546.)

Disqualification from holding office is not an unconstitutional punishment for a crime. (Barker v. People, 20 Johns. 457.)

This section confers power upon the courts to declare void acts of the legislature prescribing punishments for crime, in fact cruel and unusual. (People ex rel. Kemmler v. Durston, 119 N. Y. 569.)

But the act of 1888, chapter 489, providing for the infliction of the death penalty by means of electricity, is constitutional. (Id.)

Grand Jury — Bill of Rights.— § 6. No person shall be held to answer for a capital or otherwise infamous crime (except in cases of impeachment, and in cases of militia when in actual service, and the land and naval forces in time of war, or which this State may keep with the consent of Congress in time of peace, and in cases of petit larceny, under the regulation of the Legislature), unless on presentment or indictment of a grand jury, and in any trial in any court whatever the party accused shall be allowed to appear and defend in person and with counsel as in civil actions. No person shall be subject to be twice put in jeopardy for the same offense; nor shall he be compelled in any criminal case to be a witness against himself; nor be deprived of life, liberty or property without due process of law; nor shall private property be taken for public use, without just compensation.

[Section 6 of article I of the constitution of 1846, without change.]

Indictment of Grand Jury.

This provision has reference to criminal proceedings only with a view to punishment under the criminal law. (Matter of Smith, 10 Wend. 449.)

The bill of rights must be interpreted in light of the law as it was when the bill was adopted, and though indictments could generally be tried only in the county where the offense was committed, there were exceptions by virtue of legislative enactment. (Mack v. People, 82 N. Y. 235; People v. Dowling, 84 id. 478.)

An indictment found by a grand jury drawn under a void act is the indictment of a de facto grand jury selected and organized under the forms of law and therefore valid. (People v. Petrae, 92 N. Y. 128.)

Provision of Code of Criminal Procedure allowing amendment to indictment, by direction of court, without prejudice to defendant, is constitutional. (People v. Johnson, 104 N. Y. 213.)

When, in a case of misdemeanor, a district attorney elects to prosecute by indictment, he must do so through the medium of a legally constituted grand jury and by an indictment that is good at law both in form and substance. (People v. Scannell, 37 Misc. 345.) (1902.)

Right to Counsel, Etc.

A prisoner confined in jail has a constitutional right to private interview with counsel, even before indictment. (People ex rel. v. Risely, 13 Abb. N. C. 186.)

The right to appear and defend with counsel cannot be denied an accused person in courts-martial. (People ex rel. v. Van Allen, 55 N. Y. 31.)

But such right is not given a policeman accused before a board of police commissioners. (People ex rel. v. Police Commissioners, 31 Hun, 209.)

It is wrong to permit a jury to visit place where crime was committed without attendance of defendant or his counsel. (People v. Palmer, 43 Hun, 397.)

Twice in Jeopardy.

A new trial cannot be granted where the defendant has been acquitted. (People v. Comstock, 8 Wend. 549.)

A writ of error will not lie in behalf of the people after judgment for defendant in a criminal case. (People v. Corning, 2 N. Y. 9.)

May be tried again where plea to jurisdiction has been raised and prisoner discharged. (Gardiner v. People, 6 Park. 155, 190.)

A prisoner against whom a wrong judgment was pronounced upon a regular trial and conviction cannot be subjected to another trial. (Shepherd v. The People, 25 N. Y. 406. See also, in this connection, Hartung v. People, 22 N. Y. 95; S. C., 26 id. 167.)

An arrest of judgment after conviction upon the ground of mistake is no bar to trial for same offense. (People v. Casborus, 13 Johns. 351.)

Where a jury failed to agree upon a verdict in a criminal case, and jury was discharged, the defendant may be tried again. (People v. Goodwin, 18 Johns. 187); and where jury separated without authority before rendering a verdict a new trial could be had. (People v. Reagle, 60 Barb. 527.)

A new trial may be had upon the reversal of a conviction at the instance of the defendant, since the jeopardy is incurred with the consent of and as a privilege granted to the defendant upon his application. (People v. Palmer, 109 N. Y. 413; People v. Rudolff, 5 Park. 77.)

Where the defendant was acquitted upon some counts in an indictment and convicted on another, the reversal of the conviction does not disturb the acquittal and defendant can only be retried upon the count in which the verdict of conviction was rendered. (People v. Dowling, 84 N. Y. 478.)

To sustain the plea of a former acquittal it must appear that the party was "put in jeopardy" by the former trial; so if indictment was defective in former trial it is no bar. (Canter v. People, 1 Abb. Dec. 305.)

Conviction for assault and battery no bar to indictment for murder, where the person assaulted subsequently dies of the blows. (Burns v. People, 1 Park. 182.)

The provisions of L. 1886, chap. 21, authorizing the governor to commute a sentence of imprisonment with a condition of serving out the full term upon conviction of a subsequent felony, does not conflict with the provision that no one shall be twice in jeopardy for the same offense. (People ex rel. Willis v. Sage, 11 App. Div. 4.) (1896.)

The trial and acquittal of a person indicted for an offense where the person committing the same is also liable for a penalty to be collected in a civil action does not constitute a bar to the maintenance of such civil action to recover such penalty. (People v. Snyder, 90 App. Div. 422.) (1904.)

When a jury is impaneled and sworn, in a prosecution for grand larceny, it may be discharged by the court, and another impaneled to try the case, no evidence having been introduced for the consideration of the first jury; the proceedings so far do not constitute an independent trial of the defendant so as to protect him from further prosecution under the constitutional guarantee that "No person shall be subject to be twice put in jeopardy for the same offense." (People v. Neff, 122 App. Div. 135.) (1907.) (Affd., 191 N. Y. 210.) (1908.)

Witness against Himself in Criminal Case.

By this provision no one is to be compelled in any judicial or other proceeding against himself, or upon the trial of issues between others, to disclose facts or circumstances that can be used against him as admissions tending to prove his guilt or connection with any criminal offense of which he may then or afterward be charged. (People ex rel. Taylor v. Forbes, 143 N. Y. 219, 228.)

A witness is not protected in a criminal case against another from being compelled to give testimony which implicates him in a crime when he has been protected by statute against the use of such testimony on his own trial. (People ex rel. v. Kelly, 24 N. Y. 74, citing Perine v. Pixley, 7 Paige, 598; People v. Sharp, 107 N. Y. 427.)

Laws of 1869, chap. 678, providing that accused "shall at his own request, but not otherwise, be deemed a competent witness" is constitutional. (People v. Courtney, 94 N. Y. 490.)

By consenting to become a witness under the above act, defendant waives constitutional protection and subjects himself to the rules and tests applicable to other witnesses. (Connors v. People, 50 N. Y. 240; Brandon v. People, 42 id. 265.)

Compelling a defendant in a criminal case to stand up for identification by a witness does not compel him to give evidence against himself. (People v. Gardner, 144 N. Y.

Privilege of witness, see Matter of Attorney-General, 21 Misc. Rep. 101 (1897); affirmed, but not on this point, 22 App. Div. 285.

False and fictitious papers retained in a public office purporting to be regular public papers and constituting vouchers for a false bill are not private papers exempted from unreasonable search or seizure, nor do they constitute a violation of defendant's right to exemption from being compelled to give evidence against himself. (People v. Coombs, 158 N. Y. 533.) (1899.)

A statute requiring a party proceeded against for cancellation of liquor tax certificate to answer under oath, unconstitutional. (Matter of Peck, 167 N. Y. 391.) (1901.)

The taking of a prisoner charged with murder to a place outside of the jail for the purpose of examination by physicians for the people as to his mental condition, where defense of insanity is interposed, not objectionable as compelling him to be a witness against himself. (People v. Truck, 170 N. Y. 203.) (1902.)

In a criminal cause the court will not take notice of the manner in which witnesses have possessed themselves of papers or other articles of personal property which are material and properly offered in evidence. The admission in evidence upon the trial of an indictment for policy playing of private papers alleged to have been unlawfully seized for the purpose of establishing defendant's handwriting on certain policy slips does not compel him to become a witness against himself. (People v. Adams, 176 N. Y. 351.) (1903.)

Taking the shoes of one charged with murder and comparing them with footprints in the newly-fallen snow and introducing upon the trial evidence that they correspond in all respects is not compelling the defendant to be a witness against himself. (People v. Van Wormer, 175 N. Y. 188.) (1903.)

The provision that testimony given by witness cannot be received against him upon any criminal investigation or proceeding does not protect the constitutional rights of the

witness so that he can be compelled to testify against himself. (People ex rel. Lewisohn v. O'Brien, 176 N. Y. 253.) (1903.)

The presumption that a defendant in a criminal action is innocent survives the finding of an indictment, arrest, arraignment and throughout trial until the rendering of a verdict of guilty. To the rendering of that verdict the accused cannot lawfully be subjected by the police authorities to the outrage of having his photograph taken for place in the "Rogues' Gallery." Nevertheless, in the absence of statutory authority, a writ of mandamus cannot issue to compel the destruction of such photograph. (People ex rel. Gow v. Bingham et al., 57 Misc. Rep. 66.)

The right of a witness to refuse to answer a question upon the ground that it would tend to incriminate him or subject him to a penalty or to disgrace or degrade him, is not protected by a constitutional provision. The legislature has power to require a witness to answer any question, except so far as he is protected by the constitutional provision which prohibits his being compelled to be a witness against himself; and it follows that if the answers to the questions asked cannot in any way be used against the witness in a criminal proceeding, the provisions of the constitution are not violated. (People ex rel. Lewisohn v. General Sessions, 96 App. Div. 201.) (First Dept., July, 1904.)

Section 321 of the tax law, making it a misdemeanor for any person to refuse to prevent the state comptroller or his representative to inspect any book, memoranda or record relating to a sale or delivery of stock, is unconstitutional, being in violation of the provision that "No person shall be compelled in any criminal case to be a witness against himself." (People ex rel. Ferguson v. Reardon, 124 App. Div. 819.) (First Dept., March, 1908.)

Comparison of shoes, taken from defendant, with footprints made in the snow at the home of the deceased at the time of his murder, is not a violation of section 6 of article 1 of the constitution. The seizure of the shoes and their comparison with the footprints was not compelling the defendants to be witnesses against themselves. (People v. Van Wormer, 175 N. Y. 188.)

In construing section 193 of the forest, fish and game law, as amended by chapter 353, Laws of 1903, which says that "No person shall be excused," etc., to save it from the taint of unconstitutionality, must be held not to include a defendant who is put upon the witness stand by the people.

A person not a defendant called as a witness in a civil or criminal action is not excused from giving evidence upon the ground that such evidence might tend to convict him of a crime. (Matter of Birdsall, 49 Misc. Rep. 53.) (1905.)

A contention that a defendant, by being subjected to a physical search and examination at the hands of the authorities, was compelled thereby to furnish testimony against himself, in contravention of section 6 of article 1 of the constitution, will not be sustained; especially where the acts complained of took place before the defendant was formally accused of a crime and where there is not evidence to indicate that the search was without defendant's consent or acquiescence. (People v. Strollo, 191 N. Y. 42.)

Laws of 1905, chap. 689, amending the statute relative to the powers and duties of the superintendent of elections for the metropolitan elections district, is valid. (People v. Cahill, 193 N. Y. 232. (1908.)

The constitutional privilege does not relieve a person from obeying a subpoena. (Matter of Osborne, 62 Misc. Rep. 584.) (1909.)

Where a man stands indicted by the grand jury in Queens county charged with grand larceny and forgery, the service of a subpoena on him to appear and testify before a commissioner appointed to investigate alleged violations of the law in Queens county having the same scope as the grand jury inquiry, is an invasion of his constitutional right not to be compelled in any criminal case to be a witness against himself. (Matter of Phillips, 70 Misc. 8.) (1910.)

A law providing that "any person operating a motor vehicle who, knowing that injury has been caused to a person or property, due to the culpability of the said operator, or to accident, leaves the place of said injury or accident, without stopping and giving his name, residence, including street and street number, and operator's license number to the injured party, or to a police officer, or in case no police officer is in the vicinity of said injury or accident, then reporting the same to the nearest police station or judicial officer, shall be guilty of a felony" is violative of the constitutional provision that no person shall be compelled in any criminal case to be a witness against himself. (People v. Rosenheimer, 70 Misc. 433. (1911.)

Where a defendant in a criminal action is subpoenaed and compelled to be a witness against himself before the grand jury which indicted him for perjury in having previously sworn falsely before another grand jury regarding

the disposition and receipt of certain money, his constitutional rights are invaded. (People v. Bermel, 71 Misc. 356.) (1911.)

A defendant may waive his constitutional rights, and if he does so clearly and positively, he can not later claim an invasion of his constitutional rights, when he voluntarily appeared and testified before a commission and was later indicted upon the testimony given before such commission. (People v. Burke, 72 Misc. 336.) (1911.)

Due Process of Law.

Due process of law requires that a party shall be properly brought into court and shall there have an opportunity to be heard. The legislature has the right to take away a particular form of remedy and to give a new one. (People ex rel. v. Supervisors, 70 N. Y. 228.)

"Due process of law" cannot mean less than a prosecution or suit instituted and conducted according to the prescribed forms and solemnities for ascertaining guilt or determining the title to property. (Taylor v. Porter, 4 Hill, 140.)

Such summary proceedings as were recognized at common law and such as were authorized by statute prior to the adoption of the bill of rights may be regarded as "due process of law." (Rockwell v. Nearing, 35 N. Y. 302.)

The guaranty that no person shall be deprived of his property without due process of law may be violated without a physical taking; it may be destroyed or its value annihilated. (Matter of Jacobs, 98 N. Y. 98, 105, citing Wynehamer v. People, 13 id. 378, and People v. Otis, 90 id. 48.)

All property is protected by this provision without reference as to whether its abuse engenders mischief. (Wynehamer v. People, 13 N. Y. 378.)

As to meaning of word "liberty" in this provision, see People v. Gillson, 109 N. Y. 389.

The meaning of the word "deprived" is the same as "taken" in the same section; and when property is not seized and directly appropriated to public use, though it be subjected to greater burdens than before, it is not taken without due process of law. (Grant v. Courter, 24 Barb. 232.)

This provision is not confined to judicial proceedings, but extends to every case which may deprive a citizen of life, liberty or property, whether the proceeding be judicial, ad-

ministrative or executive. (Stuart v. Palmer, 74 N. Y. 183, containing collation of authorities as to meaning of "due process of law.")

It has no reference to disciplinary proceedings before a medical society. (Matter of Smith, 10 Wend. 449.)

It does not mean that a trial by jury is necessary. (Wynehamer v. People, 13 N. Y. 378, 425; People ex rel. Herrick v. Smith, 21 id. 595.)

This constitutional protection to property may be waived by the owner. (People v. Turner, 117 N. Y. 227.)

Personal service of process is not necessary. The legislature may provide for bringing in parties by publication of notice. (Matter of Empire City Bank, 18 N. Y. 199; Owners of Ground, etc. v. Albany, 15 Wend. 374; Happy v. Mosher, 48 N. Y. 313; Matter of Union El. R. R. Co. of Brooklyn, 112 id. 61.)

Section 435 of the Code of Civil Procedure, providing a substituted service in lieu of personal service, is not violative of the constitutional provision. (Bank v. Thurber, 74 Hun, 632.)

Taxation is not taking property without due process of law. (People ex rel. v. Mayor of Brooklyn, 4 N. Y. 419; Town of Guilford v. Supervisors, 13 id. 145; People v. Supervisors of Ulster Co., 36 Hun, 491.)

A hearing or an opportunity to be heard in an assessment for local improvement is, however, absolutely essential. (Stuart v. Palmer, 74 N. Y. 183.)

A statute directing an assessment for street improvement must contain some provision giving notice to property-owners. (McLaughlin v. Miller, 124 N. Y. 510; Remsen v. Wheeler, 105 id. 573.) Laws 1871, chapter 464, title 10, relating to assessments of water rates in Long Island City, are unconstitutional for want of provision for notice and hearing. (Matter of Trustees of Union College, 129 N. Y. 308.)

A "grievance day"—an opportunity to be heard in respect to the justice and correctness of a proposed assessment—is a necessary part of the due process of law for the levying of assessments on property. (People ex rel. v. Henion, 64 Hun, 475.)

Sections 663 and 665 of New York consolidation act requiring all tenement-houses to have water on each floor is unconstitutional, as not providing an opportunity to be heard. (Health Dept. v. Trinity Church, 43 St. Rep. 142.)

Collateral inheritance tax law gives sufficient notice and opportunity for a hearing, and does not invade constitutional rights. (Matter of McPherson, 104 N. Y. 306.)

The principle of no opportunity to be heard does not apply to statute providing that property may be sold for unpaid water rates. (Hennessey v. Volkenning, 30 Abb. N. C. 100.)

Provision for some mode of judicial proceeding, when property or effects of a corporation are seized by virtue of a statute, is not essential to validity of statute. (People ex rel. v. Osborn, 57 Barb. 663.)

The common-law right of summary abatement of nuisance without judicial process or proceeding is not affected by this constitutional protection. (Lawton v. Steele, 119 N. Y. 226.)

Prospective salary or other emoluments of a public officer are not property, and an act affecting salary or providing salary in place of fees is constitutional. (Connor v. Mayor, etc., of N. Y., 5 N. Y. 285.)

The power of the legislature to change existing rules of evidence, and vary existing rules for limitation of actions is not affected by this constitutional prohibition. (People v. Turner, 117 N. Y. 227, citing Rexford v. Knight, 11 id. 308; Hand v. Ballou, 12 id. 541; Howard v. Moot, 64 id. 262.)

Act conferring upon legislature the right to punish, as for contempt, a person refusing to appear as a witness before that body or a committee thereof, is not in violation of this provision. (People ex rel. v. Keeler, 99 N. Y. 463.)

An act curing defects in a tax sale, where such defects exist as mere irregularities and do not extend to matters of jurisdiction, is constitutional. (Ensign v. Barse, 107 N. Y. 329.) But where assessment is void and sales thereunder conveyed no title, act cannot be passed validating such assessment and sales. (Cromwell v. MacLean, 123 N. Y. 474.)

Statute providing for appointment of not more than two civil service commissioners from same political party not in violation of this provision. (Rogers v. Common Council of Buffalo, 123 N. Y. 173.)

Statute (L. 1888, chap. 581) fixing the maximum charge for elevating grain is not violative of the constitutional guaranty protecting private property. (People v. Budd, 117 N. Y. 1. This case is a leading one on the constitutional limitation of the power of the legislature.)

Statute regulating heating of cars valid. (People v. N. Y. & N. H. R. R. Co., 5 N. Y. Supp. 945.) So is L. 1885, chap. 183, § 7, prohibiting manufacture of article in semblance of butter. (People v. Arensburg, 105 N. Y. 123.) Statute prohibiting watering of milk invades neither life, liberty nor property. (People v. West, 106 N. Y. 293.) Act regulating height of buildings facing public streets is constitutional. (People ex rel. v. D'Oench, 111 N. Y. 359.)

Game law of 1871, chap. 721, is declared valid. (Phelps v. Racey, 60 N. Y. 10.)

Act regulating catching of fish in inland waters constitutional. (People v. Doxtater, 75 Hun, 472.) Sections 238, 240 of game law (L. 1892, chap. 488) are not unconstitutional as depriving a county of property without due process of law. (People ex rel. v. Crennan, 141 N. Y. 239.) Provisions of "vinegar act" (L. 1889, chap. 515, § 4), prohibiting manufacture and sale of vinegar containing artificial coloring matter, is constitutional. (People v. Girard, 73 Hun, 457.) Rapid transit act of 1891, chap. 4, is constitutional. (Matter of Board of Rapid Transit R. R. Commissioners, 47 St. Rep. 347.)

Civil damage act is valid. (Bertholf v. O'Reilly, 74 N. Y. 509.)

Law 1855, chap. 231, subjecting intoxicating liquors, when kept for sale, to destruction is unconstitutional. (Wynehamer v. People, 13 N. Y. 378, 486.)

Act of legislature (L. 1862, chap. 459) authorizing seizure and sale of animals trespassing within a private inclosure without judicial process, is against this constitutional guaranty. (Rockwell v. Nearing, 35 N. Y. 302.) Amendatory act of 1867, chap. 814, provided necessary notice and hear-

ing and is constitutional. (Campbell v. Evans, 45 N. Y. 356.) The temporary seizure, as authorized by this statute, awaiting judicial action, is not violative of the constitution. (Cook v. Gregg, 46 N. Y. 439.)

Statute (L. 1884, chap. 272) prohibiting the manufacture of cigars, etc., in tenement-houses unlawfully interferes with liberty and the use of property, and is unconstitutional. (Matter of Jacobs, 98 N. Y. 98.) To sustain a hea'th law as constitutional against objection that it interferes with personal liberty, etc., without due process of law, the courts must be able to see that it has some relation to public health, that the public health is the end actually aimed at, and that it is appropriate and adapted to that end. (Idem; containing collation of authorities on legislative power of police regulation, and see People v. Gillson, 109 N. Y. 389.)

L. 1889, chap. 59, § 4, providing that upon the publication of a notice, a negotiable instrument shall no longer be transferable deprives the owner of his property without due process of law and is unconstitutional. (People ex rel. v. Otis, 90 N. Y. 48.)

Act prohibiting sale of article of food upon inducement of a gift or prize, invades personal rights and is unconstitutional. (People v. Gillson, 109 N. Y. 389.)

L. 1884, chap. 202, prohibiting manufacture and sale of any article to take the place of butter is unconstitutional. (People v. Marx, 99 N. Y. 377.)

The right to build frame houses within the fire limit of a city, granted by the common council, cannot be rescinded by subsequent action after houses are partly built. Such rescission would be unconstitutional. (City of Buffalo v. Chadeaque, 27 St. Rep. 60.)

That part of L. 1884, chap. 202, § 13, requiring that milk shall be declared adulterated if it does not contain a certain percentage of certain ingredients deprives an accused person of his liberty and property without due process of law. (People v. Cipperly, 37 Hun, 319.)

Act validating stock subscription to a corporation is depriving persons of property without due process of law. (N. Y. & Oswego R. R. Co. v. Van Horne, 57 N. Y. 473.)

Due process of law in its application to judicial proceedings means a course of legal proceedings according to those rules and principles which have been established by our jurisprudence for the protection and enforcement of private rights. If the proceeding involve the personal liability of the defendant, he must be brought within the jurisdiction by service of process within the state, or voluntary appearance. If it be a proceeding in rem, the res must have been seized or attached, or at least must be within the jurisdiction. (Ward v. Boyce, 152 N. Y. 191.) (1897.)

Due process of law does not require a legal proceeding according to the course of the common law, nor personal notice, but it is sufficient if a kind of notice is provided by which it is reasonably probable that the party proceeded against will be apprised and an opportunity given him to defend. (Schneider v. City of Rochester, 90 Hun, 171.) (1895.)

Due process implies notice or an opportunity to be heard. It is not enough that in the particular case notice was in fact given. (Matter of City of Brooklyn, 87 Hun, 54.) (1895.)

A commitment of a person for a term exceeding that for which sentenced, if such person is identified as a former offender, held not due process of law. (Matter of Kenny, 23 Misc. Rep. 9.) (1898.)

A commitment to an inebriate asylum, without notice to the person committed, without a hearing and without her presence, is not due process of law. (People ex rel. Ordway v. St. Saviour's Sanitarium, 34 App. Div. 363.) (1898.)

A commitment for contempt, by a commissioner appointed in this state to take testimony in an action pending in another state pursuant to section 920 of the Code, is not due process of law. (People ex rel. MacDonald v. Leubischer, 34 App. Div. 577.) (1898.)

The provision of the Penal Code making it a misdemeanor to have in possession silverware below a certain prescribed standard is not unconstitutional as depriving persons in possession of such goods of their property without due process of law. (People v. Webster, 17 Misc. Rep. 410.)

L. 1896, chap. 448. The dog license law held unconstitutional as depriving owner of property without due process

of law. (Fox v. Mohawk & Hudson River Humane Society, 25 App. Div. 26.) (1898.)

Ticket brokerage act held unconstitutional as violative of the constitutional guarantees of civil rights and privileges and of liberty. (People ex rel. Tyroler v. Warden, 157 N. Y. 116.) (1898.)

A city has no vested right to money paid by way of assessment for local improvement which the legislature cannot take away by directing it to be refunded to the property-owner. (People v. Molloy, 35 App. Div. 136.) (1898.)

It is competent for the legislature to give additional remedies to creditors and to prescribe that such remedies shall be pursued and shall be exclusive without being held to have deprived creditors of vested rights. (Persons v. Gardner, 42 App. Div. 490.) (1899.)

The legislature has no power to confer upon a commissioner appointed by the courts of another state to take testimony in this state power to punish a witness appearing before him for a refusal to answer any question material and necessary upon the trial of his case in the other state and by warrant to imprison such witness until he shall comply with the directions of the commissioner. The judicial power is exclusively vested by the constitution in the courts established by or provided for therein and in other officers or bodies where the constitution by express provision vests in such other officers or bodies powers in their nature judicial. The legislature has no power to vest in other bodies or departments of the government judicial powers, or to authorize such other departments or officers of the government to issue process which shall be due process of law. (People v. Leubischer, 34 App. Div. 577.) (1898.)

The enactment of a statute of limitations is unconstitutional as to existing causes of action if it fails to allow a reasonable time after it takes effect for the commencement of suits thereon, and it is not enough that the act affords a reasonable interval between its passage or becoming a law and its taking effect. (Gilbert v. Ackerman, 159 N. Y. 118.) (1899.)

Due process of law requires that a hearing or opportunity to be heard be given to the persons whose property

rights are affected by means of due notice given by the board or officials to whom has been delegated by the legislature the administrative or judicial process and detail of taxation before they exercise their judgment and discretion. The doctrine of due process of law has no application whatever to the legislature, but applies only to the judicial department of government which embraces every official to whom the doing of any act of a judicial nature is intrusted by the legislature. That which is within legislative province the legislature may do without notice to any one, and taxation in all its form. and details is within such province. (Matter of Curren, 25 Misc. Rep. 432 affd., 38 App. Div. 82.)

Due process of law means law in its regular course of administration through courts of justice, and secures to the defendant the benefit of those fundamental rules of the common law by which judicial trials are governed. (People v. Sickles, 156 N. Y. 547.)

The trial of the defendant is none the less by due process of law because the jury is composed of persons taken from the body selected by the special commissioner of jurors from the general list as being generally free from those defects which must or should cause them to be rejected, either by the prosecution or by the defendant. The work of the jury commissioner is preparatory and tentative. In the end the court alone exercises the judicial function of deciding upon the qualifications of the jurors entirely unhampered by the previous examination and inquiry of the commissioner. If the defendant is secured a trial before an impartial jury taken from the county and conducted according to the law of the land, he has had all the benefit of the constitutional guarantee. No right to appeal from the rulings of the trial court upon challenges is granted by the constitution. (People v. Dunn, 157 N. Y. 528.) (1899.)

The assets of a corporation belong to it and not to its members and are to be administered for the mutual benefit of all existing and new members. The fact that existing members are unable or unwilling to take offered interest in the corporation and subscribe for new shares upon favorable terms within a time limit does not produce an uncon-

stitutional result. (Grobe v. Erie County Insurance Co., 39 App. Div. 183.) (1899.)

A restrictive condition in a proposal for bids to supply beef and mutton for a municipal department restricting same to animals killed within the state is not unconstitutional. (Matter of Rooney, 26 Misc. Rep. 73.) (1899.)

The right of navigation is a public right belonging not to towns, villages or cities as corporations, but rather to all citizens in severalty. Where such right has been impaired by legislative action a law which restores it is within the power and duty of government. (Matter of Cox v. State of New York, 26 Misc. Rep. 177.) (1899.)

A perfected railroad franchise constituted either by direct legislative grant or by consent of local authorities and property-owners in pursuance of the constitution and general laws, especially where followed by actual construction and operation, is a property right that cannot afterward be taken away or diminished either by subsequent constitutional amendment or by legislative or municipal action, except in the exercise of the police power or the right of eminent domain. (Ingersoll v. Nassau Electric R. R. Co., 157 N. Y. 453.) (1899.)

A Code provision requiring the court, upon application of the sheriff when sued for the recovery of chattels levied upon or for damages by reason thereof, to substitute a sheriff's indemnitor as defendant in the action in opposition to wishes of the plaintiff, constitutes a taking of private property without due process of law. (Levy v. Dunn, 160 N. Y. 504.) (1899.)

The drainage act (L. 1895, chap. 384) providing for an apportionment of the damages and expenses incurred in the drainage of agricultural lands over the lands of others, between the petitioners thereunder and the owners of the lands taken in proportion to the benefits received, held unconstitutional. It permits the taking of private property for a private purpose and benefit. (Matter of Tuthill, 163 N. Y. 133.) (1900.)

The provisions of a general drainage act making the assessment an interest-bearing debt and a lien on the land before any notice of it is given is not unconstitutional provided that subsequent notice and right to appeal is provided for. (Matter of Lent, 47 App. Div. 349.) (1900.)

An interest vested prior to the enactment of the transfer tax act is not taxable. (Matter of Hitchins, 43 Misc. Rep. 485.) (1904.)

A franchise is property of which the owners cannot be deprived except by eminent domain. Where a corporation by virtue of the act under which it is incorporated is authorized to exact certain tolls, it cannot be deprived of such right by subsequent legislative act. (Rochester & C. Turnpike Co. v. Joel, 41 App. Div. 43.) (1899.)

The railroad mileage book act, being limited in its scope to transportation fully within the limits of the state, is a valid exercise of the state authority. (Purdy v. Erie R. R. Co., 162 N. Y. 42.) (1900.)

But as to a corporation incorporated before the time of the enactment of the statute and authorized to charge three cents a mile, the act is unconstitutional. (Watson v. D., L. & W., 32 Misc. Rep. 311.) (1900.)

The anti-monopoly act does not infringe upon personal liberty without due process of law. (Matter of Davies, 168 N. Y. 89.) (1901.)

Provisions of labor law relative to payment of prevailing rate of wages unconstitutional because it invades rights of liberty and property and confiscates all property rights of the contractor, and imposes a penalty upon the exercise of the lawful right of the city or contractor to agree with their employees upon the terms and conditions of employment. (People ex rel. Rodgers v. Coler, 166 N. Y. 1.) (1901.)

The provisions of the labor law requiring stone to be cut within the state is unconstitutional. (People ex rel. Treat v. Coler, 166 N. Y. 144.) (1901.)

The right given by special statute to a railroad to charge a certain fare is a privilege or franchise in the nature of property which vested in the corporation and until repealed is entitled to the same protection from invasion as any other species of property. (Parker v. E., C. & N. R. R. Co., 165 N. Y. 274.) (1901.)

An act prohibiting the continuance of treating garbage in the borough of Brooklyn under an existing contract deprives the contractor of his property without compensation and without due process of law. (N. Y. Sanitary Co. v

Dept. of Public Health, 32 Misc. Rep. 577 (1900); affd., 61 App. Div. 106.) (1901.)

A provision in a village charter that, as a condition of commencing an action against the village for personal injuries caused by negligence, notice of intention to commence such action shall be filed with the clerk of the village within forty-eight hours after the cause of action has accrued is unreasonable and unconstitutional. (Green v. Village of Port Jervis, 31 Misc. Rep. 59.) (1900.) (Barry v. Village of Port Jervis, 64 App. Div. 268.) (1901.)

Mileage-book act requiring companies to issue mileage-books is unconstitutional as to corporations existing at the time of its enactment. (Beardsley v. N. Y., L. E. & W. R. R. Co., 162 N. Y. 230.) (1900.)

Tax on a transfer by appointment under a power conferred by will before the statute imposing the tax was enacted is constitutional. (Matter of Potter, 51 App. Div. 212.) (1900.)

The exemption of plankroad companies from taxation creates no vested right which subsequent legislation may not abrogate. (People v. Cummings, 53 App. Div. 36.) (1900.)

The legislature has no power to make valid a void deed of the state comptroller by limiting the time within which an action may be brought to set aside such deed. (Wallace v. International Paper Co., 53 App. Div. 41.) (1900.)

Anti-scalpers' law (L. 1901, chap. 639) unconstitutional, as an unlimited ticket which has been issued is property in the hands of the holder and transferable. (People v. Caldwell, 64 App. Div. 46.) (1901.)

The discharge of sewage upon oyster beds by municipal corporations is a taking of the property of their owners within the meaning of the constitution. (Huffmire v. Brooklyn, 162 N. Y. 584.) (1900.)

The provisions of insanity law permitting a commitment to an asylum without notice, and the provision of the Code of Civil Procedure authorizing the appointment of a committee of the person so committed, to enable the state to secure reimbursement for his maintenance without a new investigation of the question of his competency, are constitutional. (Matter of Walker, 57 App. Div. 1.) (1901.)

The provision of a tax law authorizing county treasurer

to appraise estates subject to transfer tax constitutional. (Matter of Fuller, 62 App. Div. 428.) (1901.)

The warehouseman's act providing that no warehouseman shall be made a party defendant in any action affecting the title to or possession of goods held in storage, unless he shall claim some interest therein other than a lien for storage, deprives the party to an action of a remedy which is a property right. (Follett Wool Co. v. Albany Terminal Warehouse Co., 61 App. Div. 296.) (1901.) (Milligan v. Brooklyn Warehouse Co., 34 Misc. Rep. 55.) (1901.) (Cottew v. Dube, 32 Misc. Rep. 632.) (1901.)

The provision of the transfer tax law taxing estates upon remainder or reversion which come into actual possession or enjoyment after the passage of the act is a tax upon property and not upon the right of succession. (Matter of Pell, 60 App. Div. 286.) (1901.)

Charter provision that claim for personal injuries must be presented within thirty days after cause of action accrued, unreasonable and unconstitutional. A legislative act which operates to deprive the plaintiff of a reasonable opportunity to vindicate his rights, or substantially denies him a remedy for the wrong he has suffered through a neglect of duty on the part of the defendant which it owed him to keep the streets and highways in a reasonably safe condition for the use of the public, is unconstitutional and void. It appears that where the city is relieved from liability for damages resulting from defective streets, a cause of action exists against the officer absolutely charged with the ministerial duty of keeping them in repair. A remedy for a wrong suffered cannot be denied altogether. (Williams v. Village of Port Chester, 72 App. Div. 505.) (1902.) (Id., 97 App. Div. 84.) (1904.)

Act requiring street railways to furnish free transportation to policemen and firemen, unconstitutional. (Wilson v. United Traction Co., 72 App. Div. 233.) (1902.)

The village of Lansingburgh having been merged in the city of Troy, the latter is liable for cause of action for personal injuries which existed against the former. (Tyler v. Village of Lansingburgh, 37 Misc. Rep. 604.) (1902.)

The sidepath law authorizing the construction and maintenance of sidepaths for the exclusive use of bicycles is constitutional. (Ryan v. Preston, 32 Misc. Rep. 92.) (1901.) (Affd., 59 App. Div. 97.) (1901.)

Charter provision that no action or proceeding to set aside, cancel or annul a local improvement assessment shall be maintained unless commenced within thirty days after delivery of assessment-roll to treasurer and notice by him of receipt of same, held constitutional. (Loomis v. City of Little Falls, 66 App. Div. 299.) (1901.) (Affd., 176 N. Y. 31.) (1903.)

New York rapid transit act held constitutional as against owners of property abutting on streets through which it is constructed. (March v. City of New York, 69 App. Div. 1.) (1902.)

Provisions of section 1499, Code of Civil Procedure, that an action to recover possession of premises upon which stand exterior wall of building, etc., cannot be maintained unless action be commenced within one year after completion of the erection of such wall, is constitutional, being in the nature of a statute of limitations. (Volz v. Steiner, 67 App. Div. 504.) (1902.)

While the legislature has power to provide for the aboli tion of grade crossings, the owners of property abutting on the streets, although their title extends only to the margin thereof, have incorporeal rights of light, air and access in the nature of easements which constitute private property, and of which they cannot be deprived without compensation. (Egerer v. N. Y. C. R. R. Co., 70 App. Div. 421.) (1902.)

Code provision authorizing the court to reduce alimony inoperative in case of a judgment which did not reserve such power to the court and was entered prior to passage of statute. (Livingston v. Livingston, 74 App. Div. 261.) (1902.) (Affd., 173 N. Y. 377.) (1903.)

Act authorizing removal of chief of police, thereby depriving him of prospective benefit in police pension fund, not unconstitutional, as such right had not become vested. People ex rel. Devery v. Coler, 71 App. Div. 584.) (1902.) (Affd., 173 N. Y. 103.) (1903.)

Contingent interest of police officer in police pension fund is not a contract or vested property right of which he cannot be deprived by legislative enactment. (People v. Peck, 73 App. Div. 89.) (1902.)

Charter of second class cities was amended by providing for salaries for aldermen to take effect April 25, 1901, sub-

sequently same section was amended by providing that the first amendment should not take effect until January 1, 1902, held that latter amendment was unconstitutional as depriving such officers of vested rights to salaries given by first amendment. (Young v. City of Rochester, 73 App. Div. 81.) (1902.)

Mileage-book act held constitutional as to a corporation reorganized and incorporated subsequent to its enactment since its incorporation was subject to all the provisions, duties and liabilities then imposed by law. (Minor v. Erie R. R. Co., 171 N. Y. 566.) (1902.) (Horton v. Erie R. R. Co., 65 App. Div. 587.) (1901.)

The legislative grant to a corporation of special privileges may be a contract, but where one of the conditions of the grant is that the legislature may alter or revoke it such action cannot be regarded as impairing the obligation of the contract. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

When a municipal corporation changes the grade of a street so as to depreciate the value of abutting property the owner is deprived of property within the meaning of this section. (Matter of Comesky, 83 App. Div. 137.) (1903.)

A tax deed issued under section 132 of the tax law which has been recorded for two years, and which is made conclusive evidence of the legality of all previous proceedings, is admissible in evidence without proof of the regularity of the proceedings on which it is based. (Baer v. McCullough, 176 N. Y. 97.) (1903.)

A provision in a municipal charter authorizing the construction of sewers and their discharge into a creek is permissory and confers no right to appropriate property without compensation, nor does it confer a right to commit a nuisance. (Sammons v. City of Gloversville, 175 N. Y. 346.) (1903.)

Before a person can be punished for a contempt in disobeying an order he must have had notice of it, and an opportunity to be heard before a court clothed with authority to act and decide the question involved. (Goldie v. Goldie, 77 App. Div. 12.) (1902.)

The court has no power to punish husband's refusal to obey an order directing payment of alimony and counsel fees by striking out his answer and refusing to allow him to defend the suit. (Sibley v. Sibley, 76 App. Div. 132.) (1903.)

Where the default of a taxpayer is caused by the failure of a public officer or his clerks to render a proper statement of the unpaid taxes a sale made for unpaid taxes omitted from the statement does not operate to deprive the owner of his title. A tax deed cannot by legislative action be made conclusive evidence of title where the proceedings upon which it is based are so fatally defective that no title passes at all. (Wallace v. McEchron, 176 N. Y. 424.) (1903.)

An easement is a constitutional right of property which cannot be taken from its owner without just compensation, and statutes providing that buildings and other erections shall not be constructed within thirty feet from the side line of the street is unconstitutional. (People ex rel. Dilzer v. Calder, 89 App. Div. 503.) (1903.)

Where a water works company organized under the transportation corporations law for the purpose of supplying water to towns and villages lying upon opposite sides of a city has procured rights of way through the towns, and entered into contract with a railroad company to use its right of way through the city and has entered into contracts for construction of plant and supplying water, legislation intended to deprive it of its vested right to use the right of way through the city so obtained is unconstitutional. (Rochester & L. O. W. Co. v. City of Rochester, 176 N. Y. 36.) (1903.)

Provision of liquor tax law that certificate may be revoked on refusal of holder to present and file verified answer without taking proof of facts charged held unconstitutional. (Matter of Cullinan, 82 App. Div. 445.) (1903.)

Statute authorizing a proceeding to enforce payment or cancellation of lost certificate of deposit does not properly protect the rights of third persons in such certificates and is unconstitutional. (Matter of Cook, 86 App. Div. 586.) (1903.)

Where a prisoner's counsel upon refusal of a motion for adjournment withdrew from the case and refused to take any further part in the trial a judgment of conviction was reversed on appeal on the ground that the constitutional right of trial had been denied to the defendant who was an Italian and appeared unable to understand the proceedings. (People v. Calabur, 91 App. Div. 529.) (1904.)

Section 33 of the forest, fish and game law prohibiting the possession of certain birds is unconstitutional in so far as it assumes to declare unlawful the possession of birds

purchased prior to the time the amendment took effect, and when their possession was lawful. (People v. Cohen, 94 App. Div. 89.) (1904.)

A statute which prevents an individual from pursuing a lawful vocation is a deprivation of liberty within the meaning of this section. The provision of the agricultural law which permits farmers to manufacture and deal in cider vinegar which does not contain the standard amount of acetic acid while prohibiting others from manufacturing and dealing in such vinegar is unconstitutional. (People v. Windholz, 92 App. Div. 569.) (1904.)

While the state is primary owner of the fish and game in the state and may prescribe conditions for its capture and subsequent possession, fish and game procured without and brought within the state is private property to which the owner has absolute title, and the state cannot question its possession or proper use. Section 141 of the forest, fish and game law prohibiting the possession of fish or game coming from without the state is unconstitutional. (People v. A. Booth & Co., 42 Misc. Rep. 321.) (1904.) (Reversed, 105 App. Div. 184.) (1905.)

The legislature has power to cure retrospectively defective or irregular proceedings to levy, assess and collect taxes provided no injustice be inflicted thereby; it also has power to exempt certain classes of property from taxation by retroactive legislation. The taxing power of the legislature is practically absolute except as restrained by constitutional limitations. (Matter of Rochester Trust Safe Deposit Co., 42 Misc. Rep. 581.) (1904.)

By taking advantage of the consolidation provisions of the railroad law railroad companies become subject to all the provisions of the railroad law, and waived the privileges in regard to fares, if any, possessed by them under prior laws. (Topham v. Interurban St. Ry. Co., 42 Misc. Rep. 503.) (1904.)

Section 618a of the code of criminal procedure, purporting to authorize the issuance of a subpœna to compel a citizen and resident of the state of New York to appear and testify as a witness in a criminal action pending in the state of Pennsylvania, is unconstitutional, as depriving him of his liberty without due process of law. (Matter of Commonwealth of Pennsylvania, 45 Misc. Rep. 46.) (1904.)

Section 315 of the charter of Greater New York does not authorize police officers to forcibly enter any house in that city without a warrant because they "suspect" that something unlawful goes on therein. (Devlin v. McAdoo et al., 49 Misc. Rep. 57.) (Dec., 1905.) (See also People ex rel. Hammond v. Breen, 44 Misc. Rep. 375.) (1904.)

The statute regulating liability of warehousemen (chap. 608, Laws of 1892), in that it substitutes as defendant a third party as depositor, who may be irresponsible, and grants immunity to the warehouseman, with whom chattels are stored, for conversion of same,— deprives the owner of such chattels of his property without due process of law. (Lissner v. Cohen, 49 Misc. Rep. 272.) (Jan. 1906.)

The provision of the so-called corrupt practice act (chap. 502, Laws 1906), for an application to the supreme court or to a justice thereof, and a summary inquest and judgment requiring a person or committee to file a statement or adjudging a person or committee guilty of contempt of court, is in violation of the constitutional provision that no person shall be deprived of his liberty or his property without due process of law. (Matter of Lance, 55 Misc. Rep. 13.)

The provisions of section 454, code of criminal procedure, requiring the court, when a person charged with crime is acquitted by a jury on the ground of his insanity, to order him to be committed to the state lunatic asylum until he becomes sane, do not contravene the provisions of the constitution against depriving any person of his liberty without due process of law. (People ex rel. Peabody v. Baker, 59 Misc. Rep. 359.) (May, 1908.)

Rules and regulations of the state commissioner of health for the protection from contamination of the public water supply of a municipality, made under the authority of the public health law, cannot deprive landowners adjacent to a pond or lake of the ordinary and reasonable use of the waters adjacent to and covering a part of their lands without compensation. (George v. Village of Chester, 59 Misc. Rep. 553; Heaton v. Village of Chester, 59 Misc. Rep. 558.)

Where an act of legislation fixes a maximum rate of compensation for the services of a public utilities corporation, which is so low as to work a practical destruction or confiscation of the corporation's property, such act is a violation of the constitutional prohibition against taking of property without due process of law. (Brooklyn Union Gas Co. v. City of New York, 50 Misc. Rep. 450.) (1906.)

Due process of law requires not only that the party be brought into court, but that he be allowed sufficient time to prepare his evidence. (Riglander v. Star Co., 98 App. Div. 101. See also Martin's Bank, Id. 146.) (First Dept., Nov., 1904.)

Before a violator can ask the court to determine the question he seeks to raise he must show that he has a right which requires a determination of the constitutionality of the act, by force of which he claims he is being deprived of his property without due process of law. (People ex rel. Simpson v. Wells, 99 App. Div. 364.) (First Dept., Dec., 1904.)

Section 384d of the penal code (added by chap. 657, L. 1904), prohibiting issue of trading stamps unless they "shall have legibly printed or written upon the face thereof the redeemable value thereof," is in violation of the constitutional provision against interference with "life, liberty or property without due process of law," and said statute is unconstitutional for the further reason that it creates a preferential class. (People ex rel. Appel v. Zimmerman, 102 App. Div. 103.) (Fourth Dept., March, 1905.)

Section 856 of the Code of Civil Procedure which authorizes any judge, on proof by affidavit that a person, attending pursuant to a subpœna, refuses without reasonable cause to answer legal and pertinent question, to commit, by warrant, the offender to jail, is unconstitutional in that as it does not provide for notice to the witness or afford him an opportunity to be heard, it operates to deprive him of his liberty without due process of law. (Matter of Grout, 105 App. Div. 98.) (Second Dept., May, 1905.)

An ordinance of the city of New York, allowing permits to construct ornamental projections on a building, extending beyond the building line of a public street, "Provided in

the opinion of the officers having jurisdiction no injury will come to the public thereby" is unconstitutional so far as it affected an owner of property adjoining a building upon which such projection is sought to be constructed in that it deprives him of his property (his easement) without due process of law. (McMillan v. Klaw & Erlanger Co., 107 App. Div. 407.) (First Dept., Sept., 1905.)

A liquor tax certificate is a vested property right of which the holder can be divested or deprived only by due process of law; and accordingly the provisions of chapter 697, Laws of 1905, in so far as they direct the special deputy commissioner of excise to revoke a liquor tax certificate issued before the passage of said chapter to a person intending to carry on traffic in liquor in connection with a hotel, without notice to the holder thereof, and without giving him an opportunity to be heard, are in violation of the constitution. (People ex rel. Loughran v. Flynn, 110 App. Div. 279.) (First Dept., Dec., 1905.)

An assessment-roll which does not describe the land assessed or state the amount thereof is defective under section 21 of the tax law, and is void under the constitutional provision prohibiting taking of property without due process of law. An assessment levied under such roll, as well as all subsequent steps leading to a sale, are void. (Lawton v. City of New Rochelle, 114 App. Div. 883.) (Second Dept., July, 1906.)

The board of health in the city of New York cannot, without notice and a hearing, revoke the license of a milk vendor because he has been convicted in the criminal court of the offense of selling adulterated milk. (People ex rel. Lodes v. Department of Health, 117 App. Div. 856.) (Second Dept., March, 1907.)

The remedy of the retailer is not, however, by a peremptory writ of mandamus, as was held by the appellate division, but by an alternative writ. (Same, 190 N. Y. 187.)

Sections 23 and 24 of the tax law of 1901, providing for the assessment of shares of national and state bank stock at one per cent. of its book value, are not unconstitutional in denying due process of law by failing to provide for a hearing of the owners of stock; for under section 24 such owner is entitled to certiorari to review the validity of the tax. (People ex rel. Bridgeport Savings Bank v. Feitner, 120 App. Div. 838.) (First Dept., July, 1907.)

Said statute held valid, but orders of appellate division reversed on account of irregularity in failing to give notice. (S. C., 191 N. Y. 88.)

Section 26 of the agricultural law if construed as absolutely prohibiting the manufacture or sale of oleomargarine, is unconstitutional. It only becomes valid when construed as prohibiting the sale of oleomargarine which by artificial means is made to resemble butter in appearance. (People ex rel. McAuley v. Wahle, 124 App. Div. 762.) (First Dept., March, 1908.)

The provisions of the forest, fish and game law (chap. 20, L. 1900), as amended, prohibiting the possession of game coming from without the state during the close season is not unconstitutional as a deprivation of property without due process of law, and is a valid exercise of the police power. (People ex rel. Hill v. Hesterberg, 184 N. Y. 126; Matter of Hill, 109 App. Div. 917, revd.; People ex rel. Silz v. Hesterberg, 109 id. 295, revd.)

Chapter 528, Laws of 1902, making the sale of merchandise in bulk fraudulent and void as against creditors of the seller unless certain prescribed conditions are complied with, violates those clauses of the federal and state constitutions providing that no person shall be deprived of life, liberty or property without due process of law. (Wright v. Hart, 182 N. Y. 330, revg. 103 App. Div. 218.)

"Due process of law" as used in the bill of rights, and as embodied in section 6 of article 1, of the constitution, means "Law in its regular course of administration through the courts of law" or "a regular trial according to the course and usage of the common law." It does not mean that the legislature cannot change rules of evidence as they existed at common law, nor make one a competent witness who was not such at common law. Hence the statute (Code Crim. Proc., § 393) permitting the unsworn statement of a child under twelve years to be received in a criminal case is not void as violating the constitutional guaranty that no person shall "be deprived of life, liberty or property without due process of law." (People v. Johnson, 185 N. Y. 219.) (May, 1906.)

Section 640d of the Penal Code (added by chap. 128, L. 1901), which provides that "in cities of the first and second class any persons who shall offer for sale any real property without the written authority of the owner of such property * * * shall be guilty of a misdemeanor," is an improper and unreasonable exercise of the police powers of the state, and is in violation of the federal and state constitutions. (U. S. Const., art. 1, § 10 and 14th amendment; N. Y. Const., art. 1, §§ 1 and 6.) (Fisher Co. v. Woods, 197 N. Y 90, revg. 110 App. Div. 890.)

An incompetent committed to an asylum for the insane, upon an order of the court issued in accordance with the

provisions of the statute, is not deprived of liberty without due process of law. And when the court, in the proper exercise of its authority, appoints a committee to take charge of such incompetent's property, it cannot be held that said incompetent is deprived thereof in a constitutional sense. (Sporza v. German Savings Bank, 192 N. Y. 8; affirmed, 119 App. Div. 172.) (April, 1908.)

Section 44 of the personal property law declaring that sale of a stock of goods in bulk without notice shall be presumed to be fraudulent and void is constitutional. (Seeman v. Lione, 67 Misc. Rep. 74.) (1910.) (Sprintz v. Saxton, 126 App. Div. 421.) (1908.)

A person convicted of a crime in a court of special sessions is not prohibited by section 2661 of the Code from administering his wife's estate. (Matter of O'Hare, 60 Misc. 269.) (1908.)

An order in supplementary proceedings for the examination of a safety deposit box is obnoxious to the provisions of the state bill of rights. (Ehrich v. Root, 124 App. Div. 432.) (1909.)

Section 454 of the Code of Criminal Procedure which provides that a defendant acquitted upon the ground of insanity may be committed to the state lunatic asylum until he becomes sane is constitutional. (People ex rel. Peabody v. Chanler, 133 App. Div. 159.) (1909.)

A county judge may dispense with service of notice of commitment upon an insane person. (Brayman v. Grant, 130 App. Div. 272.) (1909.)

A statute which directs the erection of a bridge over railroad tracks in a city may assess the amount against the railroad. (N. Y. C. & H. R. R. Co. v. City of Rochester, 129 App. Div. 805.) (1909.)

The right of a stockholder to a voice in the management of a corporation is a vested property right and entitled to protection under the constitution. (Page v. A. & B. Mfg. Co., 129 App. Div. 346.) (1908.)

The official acts of a commissioner of jurors in drawing a jury is not affected by the fact that another person was subsequently declared entitled to the office, the special jury law being constitutional. (People v. Conklin, 175 N. Y. 333.) (1903.)

An act to prevent the use of the name or picture of any person without the written consent of the person does not violate either the state or federal constitution. (Rhodes v. The S. & H. Co., 193 N. Y. 223.) (1908.)

Section 1391 of the Code of Civil Procedure as amended in 1908 extending the remedies of creditors of beneficiaries of trust estates is unconstitutional as to trusts theretofore created. (DeMuth v. Kemp, 130 App. Div. 546.) (1909.) (Brearly School v. Ward, 67 Misc. Rep. 163.) (1910.)

Sections 10 and 11 of the labor law requiring railroad corporations to pay their employees semi-monthly and in

cash is constitutional and not an interference with interstate commerce. (N. Y. C. & H. R. R. Co. v. Williams, 199 N. Y. 108.) (1910.)

A writ of prohibition cannot issue to forbid the special term and the commissioner of excise from proceeding to revoke a liquor tax certificate for a violation of the statute. (The People ex rel. Buchler v. Clement, 137 App. Div. 765.) (1910.)

A school commissioner may be removed by the commissioner of education without notice. (The People ex rel. Woodard v. Draper, 67 Misc. Rep. 460.) (1910.)

Section 1101 of the Greater New York charter is not unconstitutional in discriminating between the holders of different grades of teachers' licenses. (Fitzpatrick v. Maxwell, 67 Misc. Rep. 564.) (1910.)

Chapter 193, Laws of 1877, is not unconstitutional because it provides for no notice to the landowner of the proposed assessment and the charging of the land with the unpaid and rejected tax. (People ex rel. Consolidated Water Co. v. Barrett, 68 Misc. Rep. 59.) (1910.)

A witness required by an order of a justice of the supreme court to appear and testify before a committee of the board of aldermen of the city of Buffalo has no right of appeal from such order. (Matter of Board of Aldermen v. Mitchell, 68 Misc. Rep. 478.) (1910.)

Chapter 674 of Laws of 1910, imposing compensation upon a fixed scale to employees injured in the course of employment is constitutional. (Ives v. South Buffalo R. Co., 68 Misc. Rep. 643.) (1910.)

A wife cannot be deprived of alimony already accrued by any subsequent action of the courts or legislature. (Krause v. Krause, 127 App. Div. 740.) (1908.)

Subdivisions 1 and 2 of section 31c of the liquor tax law declaring that liquors stored for the purpose of sale in violation of the statute are a public nuisance and liable to seizure is not unconstitutional. (Clement v. May, 136 App. Div. 199; Clement v. Two Barrels of Whiskey, 136 App. Div. 291.) (1910.) (Clement v. Humgicker, 66 Misc. Rep. 1.) (1910.)

Special franchises granted to a street railroad company by a city do not lapse upon the lapsing of the corporate existence of the company, but pass to the creditors and stockholders, such franchises if acted upon become property entitled to constitutional protection. (City of New York v. Bryan, 130 App. Div. 658.) (1909.)

No constitutional right of the holder of a liquor tax certificate is violated when the certificate is revoked on the ground that the holder thereof maintained a disorderly house upon the licensed premises. (Matter of Clement, 141 App. Div. 139.) (1910.)

A law authorizing the physical examination by a physician of a woman convicted of disorderly conduct in that she is a common prostitute and her commitment to a public hospital if the examination discloses the fact that she is afflicted with a contagious venereal disease, is not a violation of this section. (People ex rel. Barone v. Fox, 144 App. Div. 611.) (1911.)

A provision of the Agricultural Law prohibiting the use of any label or brand indicative of cows or of the products of the dairy on any package containing a substitute for butter is not in violation of this section. (People v. Griffin, 71 Misc. 568.) (1911.)

A statute authorizing the destruction of unlicensed dogs not claimed and redeemed within forty-eight hours after their seizure is not unconstitutional as an unauthorized taking of property without due process of law. (People ex rel. Westray v. Delany, 73 Misc. 5.) (1911.)

In cases of purchase of property under tax sale a law setting the statute of limitations running from the date of the deed by the comptroller, without any record thereof, is invalid. (Bryan v. McGurk, 200 N. Y. 332.) (1911.)

A law which makes an employer liable in damages to an employee for personal injury by accident arising out of, and in the course of the employment, in certain cases where the work is determined to be especially dangerous, where the injury caused thereby is in whole or part contributed to by (a) a necessary risk or danger of the employment or one inherent in the nature thereof; or (b) failure of the employer of such workman or any of his or its officers, agents or employees to exercise due care, or to comply with any law affecting such employment, providing that the employer shall not be liable in respect of any injury to the workman which is caused in whole or in part by the serious and willful misconduct of the workman, is a taking of property without due process of law and unconstitutional. (Ives v. The South Buffalo Railway Co., 201 N. Y. 271.) (1911.)

A law providing that an execution may be issued against ten per cent of the income derived from a trust fund, although the fund was created by a will probated prior to the passage of that act, is not a taking of property without due process of law, and is not unconstitutional. (Brearley School v. Ward, 201 N. Y. 358.) (1911.)

Private Property for Public Use.

Property cannot be taken by act of legislature for a purpose not of public nature. (Powers v. Bergen, 6 N. Y. 558, 367; Matter of City of Buffalo, 46 St. Rep. 81.)

Lands owned by a private individual or corporation and devoted to use as a private cemetery may be condemned for public use. (Matter of Bd. of Street Opening, 133 N. Y. 329.)

A law depriving an owner of property of its beneficial use and free enjoyment or imposing restraints materially affecting the value, without legal process or compensation, is unconstitutional. (Forster v. Scott, 136 N. Y. 577.)

The owner of lands adjoining a navigable river in which tide ebbs and flows has no property in the land below high-water mark and is not entitled to compensation for the taking for a public use. (Gould v. Hudson R. R. Co., 6 N. Y. 522, distinguished in Rumsey v. N. Y. & N. E. R. R. Co., 114 N. Y. 423, 429, and overruled in id., 133 N. Y. 79, 85.)

Right to maintain a watercourse is "property" protected by the constitution and cannot be impaired without compensation. (Arnold v. Hudson R. R. Co., 55 N. Y. 661.)

The right to enjoy free from smoke, gas, steam, cinders, etc., caused by the operation of an elevated road is properly within the constitutional meaning and cannot be taken without compensation. (Abendroth v. Manhattan Ry. Co., 19 Abb. N. C. 247.)

The owner of gypsum in lands over which highway runs, who is not owner of land, is entitled to compensation. (People ex rel. v. Eldredge, 3 Hun, 541.)

A stream in which riparian owners have vested rights is private property and cannot be made a public highway by statute without compensation. (Morgan v. King, 35 N. Y. 454.)

Right to maintain a toll-bridge is private property. (Matter of Hamilton Avenue, 14 Barb. 405.) But diminution of its value by opening a free bridge in a neighborhood is not a "taking" within the constitutional provision. (Id.)

Franchise of a street railroad is property and entitled to constitutional protection. (People v. O'Brien, 111 N. Y. 1, 40.)

The power to take private property for public use is inseparable from the sovereign power of the state, and the constitution merely regulates it by requiring that just compensation be made to the owner. (Matter of Furman Street, 17 Wend. 649.)

The right to take may be delegated by the sovereignty for a public use. (Bloodgood v. The Mohawk & H. R. R. Co., 18 Wend. 59.)

The statute granting a railroad corporation the right to take, need not specify the land to be taken, but can dele-

gate to the corporation the right to choose. (Buffalo & N. Y. R. R. Co. v. Brainerd, 9 N. Y. 100.)

If use be public legislatures are sole judges as to whether benefit is such as to warrant delegation of power. (Matter of Townsend, 39 N. Y. 171.) And an act is not unconstitutional because the power is delegated to a foreign corporation. (Id.)

There must be a public use to authorize a taking. (In re Albany Street, 11 Wend. 148; In re John and Cherry Streets, 19 id. 676; Varick v. Smith, 5 Paige, 137; Cochran v. Van Suiley, 20 Wend. 365; Bloodgood v. The Mohawk & Hudson R. R. Co., 18 id. 59; Embury v. Connor, 3 N. Y. 511.)

Legislature may authorize a municipality to take for public use. (Heyward v. Mayor, etc., 7 N. Y. 314.)

Taking land for a railroad is a public use. (Buffalo & N. Y. R. R. Co. v. Brainerd, 9 N. Y. 100; People v. Law, 34 Barb. 494.)

But under the provisions of the general railroad act a corporation can take only so much and such land as the proper execution of its corporate purposes requires and renders necessary. (Matter of South Beach R. R. Co., 119 N. Y. 141.)

Construction of a street surface railroad in a city street is not such an infringement of the vested rights of an abutting owner as to require compensation. (Clark v. Rochester City & B. R. R. Co., 18 St. Rep. 903, citing People v. Kerr, 27 N. Y. 188; Killinger v. Forty second St. R. R. Co., 50 id. 206; Mahady v. Bushwick R. R. Co., 91 id. 148.)

Use of street by electric light company is a public use to which street may be devoted and compensation is unnecessary. (People ex rel. v. Thompson, 65 How. Pr. 407.)

Use by the public of an elevated railroad comes within the limits of what is known as a public use. (Spader v. N. Y. El. R. R. Co., 3 Abb. N. C. 467.)

Laying of gas pipes to supply gas to cities and towns for lighting streets and public places is for a public use. (Bloomfield Gas Co. v. Richardson, 63 Barb. 437.)

Acts passed authorizing supply of water to city of Middletown for "public and private purposes" are constitutional. Words "and private purposes" are surplusage. (Matter of Middletown, 82 N. Y. 196. See also Stamford Water-Works Co. v. Stanley, 39 Hun, 424.)

Preservation of public health is a public purpose and act

providing for drainage (L. 1896, chap. 688) is constitutional. (Matter of Ryers, 72 N. Y. 1.)

Provision in an act authorizing condemnation of land for park purposes that city may sell such lands when no longer necessary for park purposes does not render act unconstitutional as taking for a use not public. (Matter of City of Rochester, 137 N. Y. 243.)

The question whether the use is a public one is a judicial one, to be determined by the courts. (Matter of Deanville Cemetery, 66 N. Y. 569; Pocantico Water Works Co. v. Bird, 130 id. 249.) The grant by the legislature of the right to take is not conclusive evidence that the use is a public one. (Id.)

A possible limited use by a few persons, and then not as a right, but by way of permission or favor, is not sufficient to authorize the taking of private property against the will of the owner. (Matter of the Split Rock Cable Road Co., 128 N. Y. 408.)

The erection of an elevated railroad in a street, which will to some extent obscure the light of the abutting premises and depreciate their value, is a taking of such property, requiring compensation. (Story v. N. Y. El. R. R. Co., 90 N. Y. 123.)

Where a highway is taken for railroad purposes compensation must be made to owners of fee. (Trustees, etc. v. Aub. & Roch. R. R. Co., 3 Hill, 567; Fletcher v. Aub. & Syr. R. R. Co., 25 Wend. 462; Bloodgood v. Mohawk & Hudson R. R. Co., 18 id. 9; Brown v. Cayuga & Susq. R. R. Co., 12 N. Y. 486.)

Occupancy and use of lands for purpose of constructing and maintaining ditches is such an interference with the proprietary interests of the owner as to entitle him to compensation for the taking. (People ex rel. v. Haines, 49 N. Y. 587.)

Act which invades ownership must provide for a certain definite and adequate source and manner of payment. (Matter of Mayor, etc., of New York, 99 N. Y. 569; Sage v. City of Brooklyn, 89 id. 189; Kelly v. Mayor, etc., of New York, 6 Misc. Rep. 516.)

Compensation need not be paid before appropriation of land (Bloodgood v. Mohawk & Hudson R. R. Co., 18 Wend. 9).

It is sufficient if statute provides for securing the right of compensation; the actual making of such compensation is not

a condition precedent. (Patten v. Elevated R. R. Co., 3 Abb. N. C. 306.)

Provision in act providing for compensation one year after damages are appraised does not render act unconstitutional. (Allen v. Village of Northville, 39 Hun, 240.)

Payment of compensation may be deferred until it can be raised by tax. (Hammersly v. Mayor, etc., 56 N. Y. 533; Chapman v. Gates, 54 id. 132.)

Act authorizing entry for preliminary survey of railroad before compensation is made is constitutional, if it makes suitable provision for compensation in case land is subsequently taken. (Polly v. Sara. & Wash. R. R. Co., 9 Barb. 449.)

Provisions of village charter for local special assessment, and not imposing a duty upon the village to pay for land taken, are unconstitutional. (Matter of So. Market Street, 67 Hun, 594.)

The right to acquire property for public purposes and defer payment cannot be vested in a private corporation (Dusenbury v. Mutual Tele. Co., 11 Abb. N. C. 440.)

Act of legislature (L. 1853, chap. 62) authorizing highways to be laid across railroad tracks is not taking property without compensation. (Albany Nor. R. R. Co. v. Brownell, 24 N. Y. 345.)

After judgment has been rendered in an action, the fruits thereof are rights of property, and an act of legislature (§ 1440, Code of Civil Procedure) nullifying such judgment, is unconstitutional. (Gilman v. Tucker, 128 N. Y. 190.)

Municipal corporation may pass ordinance compelling removal of snow and ice, and penalty for failure is not depriving of property without compensation. (Village of Carthage v. Frederick, 122 N. Y. 268.)

As to distinction between taxation and taking private property without compensation. (People ex rel. v. Mayor of Brooklyn, 4 N. Y. 419; Sun Mutual Ins. Co. v. Mayor, etc., 8 id. 241; Brewster v. City of Syracuse, 19 id. 116.)

An assessment for benefit to pay the expense of a local improvement falls within legitimate use of taxing power. (Stryker v. Kelly, 7 Hill, 9; People ex rel. v. Lawrence, 41 N. Y. 123, 137.)

Act authorizing town to raise money by taxation for purchase of stock of railroad company is for a public improvement and is in no sense depriving a resident of his property

without compensation. (Grant v. Courter, 24 Barb. 232; Bank of Rome v. Rome, 18 N. Y. 38.)

Assessments for repaving streets, a species of taxation not covered by the constitutional prohibition. (Moran v. City of Troy, 9 Hun, 540.)

Legislature may impose a local tax for construction of canal. (Thomas v. Leland, 24 Wend. 65.)

Confirmation of an irregular and invalid assessment is not taking private property without compensation. (Mann v. City of Utica, 44 How. Pr. 334.)

A law authorizing assessments without reference to benefits would be unconstitutional as taking private property without compensation. (Stuart v. Palmer, 74 N. Y. 183.)

Nuisances may be abated by act of legislature without violating the provisions of the constitution. (Coe v. Shultz, 47 Barb. 65; Kelly v. Mayor, etc., of N. Y., 6 Misc. Rep. 516.)

Act regulating the use of wharves in a seaport does not deprive the owners of any of their rights or privileges. (Roosevelt v. Godard, 52 Barb. 533.)

This constitutional protection may be waived by the owner. (Embury v. Conner, 3 N. Y. 511; People v. Turner, 117 id. 227; Matter of Hand Street, 55 Hun, 132.)

And the constitutional objection can only be raised by the owner. (People v. Turner, 117 N. Y. 227; Waterloo Woolen Mfg. Co. v. Shanahan, 128 id. 345.)

The question of just compensation is judicial in its nature and must be conducted in a court having jurisdiction over the subject-matter. (In re City of Buffalo, 139 N. Y. 422.)

The floating of logs is a public use, and the legislature having determined the necessity for the exercise of eminent domain, the validity of the act is not open to question. (Matter of Burns, 155 N. Y. 23.) (1898.)

When damages in the exercise of the power of eminent domain have been ascertained in the constitutional method, the legislature may, in its discretion, determine the extent to which decision is reviewable on appeal. (Matter of De Camp, 151 N. Y. 557.) (1897.)

Special assessments for opening streets are laid in the exercise of the taxing power and not of eminent domain, and the question as to the extent of the exercise of this power is one of state policy of which the legislature is the sole judge. (Dyke Meadow Land & Improvement Co. v. Cook, 3 App. Div. 164.) (1896.)

The provision of the statute pertaining to the acquisition

of the fee and easements in discontinued streets and avenues, being incidental and necessary to the public purpose of laying out and opening of new streets and avenues of a city according to the plan adopted, are constitutional. (Matter of Mayor, 157 N. Y. 409.) (1898.)

The power of taxation, the police power and the power of eminent domain underlie the constitution and rest upon necessity because there can be no effective government without them. The state has all the power of eminent domain there is and all that any sovereign has, subject to the limitations of the constitution. The language of this section does not confer the power of eminent domain, but recognizing its existence surrounds it with proper limitation. There is no limitation upon the exercise of the power, except that the use must be public and compensation must be made and due process of law observed. That consists in the observance of those safeguards which time and experience have shown are necessary to protect the citizen in the enjoyment of life, liberty and property. Where the state exercises the right of eminent domain the citizen has the right to a day in court on the question of compensation but has no right to a day in court on the question of appropriation by the state unless some statute requires it. (People v. Adirondack R. R. Co., 160 N. Y. 225.) (1899.)

Chapter 207, Laws 1851, amended by chapter 712, Laws 1894, declaring the north branch of Moose river a public highway makes no provision for compensation to the riparian owners and is unconstitutional. (De Camp v. Dix, 159 N. Y. 436.) (1899.)

Chapter 533 of the Laws of 1880 and chapter 363, Laws 1893, which declare certain streams to be public highways for the floating of logs, do not make proper provision for compensation to the owners of the beds of the streams for the right of passage over their property or for taking their property for a logway and are unconstitutional. (Brewster v. Rogers Co., 42 App. Div. 343; affd., 169 N. Y. 73.) (1901.)

A statute authorizing a city to take private property by eminent domain and not providing for payment therefor before or concurrently with the taking is constitutional where it does provide a sure, sufficient and convenient remedy by which the property-owner can coerce payment. (Connelly v. Van Wyck, 35 Misc. Rep. 746.) (1901.) (Matter of Mayor of New York, 72 N. Y. Supp. 378.) (1901.)

A charter provision fixing the amount of local assessments upon abutting property at a definite sum per front foot is not unconstitutional because it fails to provide for a hearing upon the justice of the principle on which the assessment is based. (People ex rel. Scott v. Pitt, 169 N. Y. 521.) (1902.)

Where private property is acquired by eminent domain the provision for payment must be secure and certain to the property-owner. He cannot be relegated to doubtful responsibility of private corporation or an individual. Where a statute does not provide that property right acquired must be for general public use but that each person shall pay only for a private easement it must be construed as granting an additional not an exclusive remedy. (Brewster v. Rogers Co., 169 N. Y. 73.) (1902.)

An easement is a constitutional right of property which cannot be taken from its owner without just compensation. (People ex rel. Delger v. Calder, 89 App. Div. 503.)

Chapter 565, Laws of 1903, declaring Deer river a public highway for the purpose of floating logs, held constitutional. (Matter of Wilder, 90 App. Div. 262.) (1904.)

Section 45 of the membership corporations law authorizing the acquiring by cemetery associations of additional lands by eminent domain held constitutional. (Matter of Lyons Cemetery Assn., 93 App. Div. 19.) (1904.)

Chapter 515, Laws of 1903 (amending section 12 of the general municipal law) in so far as it aims to deprive, or to take from, a town a cause of action existing at the time such act was passed, must be deemed inoperative, and is in contravention of the constitution (art. 1, § 6). A cause of action being "Property." (Town of Walton v. Adair, 96 App. Div. 75.) (Third Dept., June, 1904) (Same case also in 111 App. Div. 817.) (March, 1906.)

The power of a court of equity to restrain a continuing trespass may be invoked to restrain public officers from per-

forming acts in the discharge of their duties which come within the nature of a trespass tending to the irreparable injury of the aggrieved party, as where, for instance, a policeman is stationed permanently in a saloon and in a clubroom, there is no adequate remedy at law. (Hale v. Burns, 101 App. Div. 101.) (Second Dept., Jan., 1905.)

Though a hotel-keeper's liquor tax certificate be cancelled, the court will enjoin a superintendent of buildings from removing or causing to be removed partitions forming bedrooms in the hotel. Such property cannot be destroyed without judgment or order of a court of competent jurisdiction. (Born v. Hopper, 110 App. Div. 218.) (First Dept., Dec., 1905.)

Section 3380 of Code of Civil Procedure does not violate section 6 of article 1 of the constitution. Said section of the Code is to be construed in the light of the purpose which is to enforce an immediate possession of lands condemned, when public interest will be prejudiced by delay, and the contestant in such proceedings by refusing to set a value on the lands, by answer or otherwise, cannot be permitted to defeat the object of the statute. The constitutional section is intended to insure to the owner of the land payment of the value thereof; and a deposit of the fair value thereof as shown by affidavits founded on its assessed value is sufficient when the contestant refuses to set a value at the request of the court. (Matter of Niagara, Lockport & Ont. Power Co., 111 App. Div. 687.) (Fourth Dept., March, 1906.)

The provisions of section 822 of the charter of New York (chap. 466, L. 1901), relating to the acquisition of lands for the improvement of the water front, and authorizing the setting off of benefits against an award for lands to be taken therefor, must be regarded solely as an exercise of the power of eminent domain; and are unconstitutional. The full value of lands taken, in money alone, without any

deduction for benefits which may result from such use, is the measure of that just compensation guaranteed the owner by the constitution. (Matter City of New York, 190 N. Y. 350, modfg. 120 App. Div. 819.) (1907.)

A foreign corporation maintaining an office in this state from which it sells products from mines situated in other states and collects the proceeds of sales, is doing business in this state within the meaning of the statute, and is subject to a franchise tax. Such a corporation cannot escape taxation on the theory that it is wholly engaged in interstate commerce. Its capital invested in this state, although no part of the original capital stock, may be made the basis for determining the percentage of taxation. (People ex rel. Union Surplus Co. v. Glynn, 125 App. Div. 328.) (Third Dept., 1908.)

The act establishing the commission for regulating the flow of water courses in this state (chap. 734, L. 1904), cannot be held to be unconstitutional upon the ground that it authorizes the taking of property for public use without just compensation; nor is the same unconstitutional in that it fails to provide for reasonable notice to persons interested of the proceedings to be taken by the said commission under the provisions of said act. (State Water Supply Com. v. Curtis, 192 N. Y. 319, affg. 125 App. Div. 117.) (1908.)

The right of eminent domain is an attribute of sovereignty. It belongs to the state; there is no restraint upon the legislature in delegating this power save the provision in the constitution of the state. (People ex rel. Lasher v. City of New York, 134 App. Div. 75.) (1909.)

Chapter 747, Laws of 1905, providing for damages to a person who purchases property after a change of street grades is unconstitutional as it makes a gift from the city funds. (People ex rel. City of New York v. Stillings, 134 App. Div. 480.) (1909.)

A person who has leased a right to plant oysters in navigable waters has no constitutional right to compensation for injuries to the oysters caused by improvements to the channel by the federal government. (Lewis Oyster Co. v. Briggs, 129 App. Div. 574.) (1908.)

Where the city of New York constructs a railroad under the city streets an abutting owner vested with the fee is entitled to due compensation. (Matter of Rapid Transit Commissioners, 128 App. Div. 103.) (1908.)

An ordinance of the city of Schenectady regulating the sale of fowls from cold storage is a valid exercise of the police power. (People v. Reicherter, 128 App. Div. 675.) (1908.)

The provision in a city charter giving discretionary powers to the commissioner of docks with the approval of the commissioners of the sinking fund to condemn private lands for public purposes within certain boundaries is not unconstitutional on the theory that the title vested in the city on the day the statute took effect, without providing for immediate payment so that the owner was deprived of interest from that time, because the title did not vest in the city on the passage of the act, but the commissioner was merely authorized to acquire the same in his discretion by private sale or by condemnation proceedings.

An act of the Legislature is presumed to be in harmony with the Constitution; it is only when it is made to appear clearly that this presumption is not warranted that the courts will interfere. (Matter of City of New York, 140 App. Div. 238.) (1910.)

A law prohibiting the sale or exposure for sale of calves less than four weeks old, and authorizing the seizure of calves under that age without compensation to the owner, although a taking of private property for public use without just compensation, is in the interest of public health and a justifiable police regulation. (Williams v. Rosenburg, 145 App. Div. 93.) (1911.)

Compensation for taking private property; private roads; drainage of agricultural lands.— § 7. When private property shall be taken for any public use, the compensation to be made therefor, when such compensation is not made by the State, shall be ascertained by a jury, or by not less than three commissioners appointed by a court of record, as shall be prescribed by law. Private roads may be opened in the manner to be prescribed by law; but in every case the necessity of the road and the amount of all damage to be sustained by the opening thereof shall be first determined by a jury of freeholders, and such amount, together with the expenses of the proceeding, shall be paid by the person to be benefited. General laws may be passed permitting the owners or occupants of agricultural lands to construct and maintain for the drainage thereof, necessary drains, ditches and dykes upon the lands of others, under proper restrictions and with just compensation, but no special laws shall be enacted for such purposes.

[Section 7 of article I of the amended constitution of 1846, amended. The last sentence, relating to the drainage of agricultural lands, is new.]

The jury referred to in this section means a jury drawn in the ordinary way, but a majority of them may render a decision. (Cruger v. Hudson R. R. Co., 12 N. Y. 190.)

The provision requiring compensation for private property taken for public use to be determined by a jury means a jury drawn in the same way as those required in the courts, and a provision of a statute requiring a jury to be selected by village trustees from a list prepared by them and composed of persons who need not possess the qualifications re-

quired by the courts, is not such a jury as is required by the constitution. (People ex rel. Eckerson v. Trustees of Haverstraw, 151 N. Y. 75.) (1896.)

This section intends that one jury or one commission conducted in a proper manner is to determine finally the rights of the parties where land is taken for a public use. (Schneider v. City of Rochester, 8 Misc. Rep. 652.)

A statute authorizing the common council to appoint assessors to determine the damages is unconstitutional. (House v. City of Rochester, 15 Barb. 517; Clark v. City of Utica, 18 id. 451.)

This section is not a restriction upon the legislative power to provide for a reassessment of damages, by a jury, after they have been once assessed by commissioners. (Clark v. Miller, 54 N. Y. 528.)

The constitutional provision as to the manner of ascertaining the compensation to be paid for private property when taken for a public use, may be waived by the owner. (Matter of Hand Street, 55 Hun, 132; Baker v. Braman, 6 Hill, 47; Matter of Village of Middletown, 82 N. Y. 196; Embury v. Conner, 3 id. 511; Sherman v. McKeon, 38 id. 266; Menges v. City of Albany, 56 id. 374.)

This section does not apply to a case where property is taken by the state for canal purposes. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

A statute that provides that on an appeal from an award of commissioners the court may increase or diminish the amount of compensation to landowners is unconstitutional under this section. (Matter of Malone Water-Works Co., 38 St. Rep. 95.)

The creation of a new road which answers as a substitute for a private road does not affect the title of the party to the private road. Crounse v. Wemple, 29 N. Y. 540.)

In relation to drainage, see People ex rel. Pullman v. Henion, 64 Hun, 471, and cases cited.

Laws of 1895, chap. 384, passed pursuant to the last sentence of this section, held unconstitutional. (Matter of

Tuthill, 36 App. Div. 492.) (1899.) (Affd., 163 N. Y. 133.) (1900.)

It is within the province of the legislature to add to and extend the powers of commissioners appointed by the court. (Matter of Curren, 25 Misc. Rep. 432; affd., 38 App. Div. 82.)

The clause relating to the drainage of agricultural lands is not in conflict with the fourteenth article of the federal constitution. (Matter of Tuthill, 36 App. Div. 492.) (1899.) (Affd., 163 N. Y. 133.) (1900.)

The jury provided by the highway law (chapter 568, Laws 1890), is not such a jury as is contemplated by this section. (Berridge v. Shults, 32 Misc. Rep. 444.) (1900.)

A statutory provision authorizing the appointment of commissioners by a county judge or justice of the supreme court but which does not require the taking of private property against the will of the owner is constitutional. But a failure to provide for a notice of the assessment to the property-owners as well as the right to be heard is fatal. Neither a justice of the supreme court nor a county judge constitutes a court of record. (Matter of Lent, 47 App. Div. 349.) (1900.)

Where the owner in equity sues to restrain continuing trespass a judgment requiring him to convey property upon payment of damages may be given and he cannot object to denial of right to trial by jury because by resorting to equity court he waives such right. (Westphal v. City of New York, 75 App. Div. 252.) (1902.)

Freedom of speech and press; criminal prosecutions for libel.— § 8. Every citizen may freely speak, write and publish his sentiments on all subjects, being responsible for the abuse of that right; and no law shall be passed to restrain or abridge the liberty of speech or of the press. In all criminal prosecutions or indictments

for libels, the truth may be given in evidence to the jury; and if it shall appear to the jury that the matter charged as libelous is true, and was published with good motives and for justifiable ends, the party shall be acquitted; and the jury shall have the right to determine the law and the fact.

[Section 8 of article I of amended constitution of 1846, without change.]

This section applies only to criminal prosecution. (George v. Jennings, 4 Hun, 66.)

The act prohibiting advertising of lotteries is constitutional. (Hart v. People, 26 Hun, 396.)

The erection and exhibition of a statute of a deceased person does not come within the provisions of this section, and its erection and exhibition may be enjoined where they will cause pain and distress to the relatives of the deceased. (Scuyler v. Curtis, 30 Abb. N. C. 376; 24 N. Y. Supp. 509.)

A by-law of a news association prohibiting its members from receiving or publishing the regular news dispatches of any other news association covering a like territory, is not a violation of this section. (Matthews v. Associated Press of N. Y., 61 Hun, 199.)

Provisions of this section protect the liberty, not the licentiousness, of the press, and no restriction is thereby imposed upon the power of the legislature to punish the publication of matter which is injurious to society according to the standard of the common law. (People v. Most, 171 N. Y. 423.) (1902.)

The expulsion of a member of an incorporated social organization, for publishing an article in a periodical expressing a contemptuous opinion of the members of the theatrical profession, some of whom belonged to said organization, is not in derogation of his constitutional right to freely speak, write and publish his sentiments on all subjects. (Matter of Barry v. The Players, 73 Misc. 10.) (1911.)

Right to assemble and petition; divorce; lotteries, pool-selling and gambling, laws to prevent.— § 9. No law shall be passed abridging the right of the people peaceably to assemble and to petition the government, or any department thereof; nor shall any divorce be granted otherwise than by due judicial proceedings; nor shall any lottery or the sale of lottery tickets, pool-selling, book-making, or any other kind of gambling hereafter be authorized or allowed within this state; and the Legislature shall pass appropriate laws to prevent offenses against any of the provisions of this section.

[Section 10 of article I of the amended constitution of 1846, amended. The part of this section relating to pool-selling, book-making and other kinds of gambling is new. By the amendment the act known as the Ives pool bill (L. 1887, chap. 479) and the acts amendatory thereof are rendered invalid.]

Any distribution of prizes by chance is a lottery. (Rolfe v. Delmar, 7 Rob. 80.)

Payment of prizes in money is not necessary to constitute a lottery; it is a lottery if the prizes are payable in lands and chattels. (Governors of Almshouse v. American Art Union, 7 N. Y. 228.)

This section applies to the sale of foreign lottery tickets in this state. (Charles v. People, 1 N. Y. 180.)

Where the intent was to sell packages of candy for more than their value, the purchasers taking the chance of getting a package containing a ticket entitling him to a prize, it is a lottery. (Hull v. Ruggles, 56 N. Y. 424.) So is a "gift-concert" enterprise. (Negley v. Devlin, 12 Abb. [N. S.] 210.) So is the game of "playing policy." (Wilkinson v. Gill, 74 N. Y. 63.)

When any pecuniary consideration is paid, determined by lot or chance, according to some scheme held out to the public, what and how much he who pays the money is to receive for it, that is a lottery. (People v. Noelke, 94 N. Y.

137; Kohn v. Koehler, 96 id. 362, 367; Irving v. Britton, 8 Misc. Rep. 201.)

The provision of the racing law L. 1895, chap. 570, providing an exclusive penalty for the making or recording of a wager on an authorized race course is not in violation of this section. (People ex rel. Sturgis v. Fallon, 152 N. Y. 1.) (1897.)

The offering or paying of premiums or prizes to winners of a horse race by the officers of an authorized racing association, the owners of the horses participating in the race paying an entrance fee into the general treasury of the association, and the premiums being paid out of its general funds, does not constitute gambling within the meaning of this section. (People ex rel. Lawrence v. Fallon, 152 N. Y. 12.) (1897.)

The court of another state which by the law of that state has power to amend a decree of divorce rendered therein against a resident of this state by the insertion of provisions for alimony acquires jurisdiction to render a final decree for the payment of alimony against him where he was personally served in this state with notice thereof and made a general appearance and contested it, although the decree of divorce was invalid as to him because rendered without jurisdiction. The courts of this state will give full credit for the amount fixed at the time of its rendition as a judicial debt, but will not permit the plaintiff to invoke the equitable remedies provided by the Code for enforcement of decree or enforce decree as to future payments. (Lynde v. Lynde, 162 N. Y. 405.) (1900.)

Oral betting at a horse race is not a crime under section 351 of the Penal Code.) (People ex rel. Collins v. McLaughlin, 128 App. Div. 599.) (1908.)

Escheats.— § 10. The people of this State, in their right of sovereignty, are deemed to possess the original and ultimate property in and to all lands within the jurisdiction of the State; and all lands the title to which shall fail, from a defects of heirs, shall revert, or escheat to the people.

[Section 11 of article I of the amended constitution of 1846, without change.]

For proceedings before the commissioners of the land office for the release of escheated lands, see L. 1894, chap. 317.

Lands do not escheat if there be a remote heir capable of taking. (Jackson v. Jackson, 7 Johns. 214.)

The statutes of 1833 and 1834 relating to the relinquishment of escheats are constitutional. (Englishbe v. Helmuth, 3 N. Y. 294.)

Escheats are subject to the liens of the creditors. (Mooers v. White, 6 Johns. Ch. 360.)

Escheats are subject to outstanding life estates. (People v. Conklin, 2 Hill, 67.) And to purchase-money mortgages. (Farmers' Loan & Trust Co. v. People, 1 Sandf. Ch. 139.)

Where lands escheat to the state, the state may grant the same without actual entry or inquisition, even though it be held adversely by one claiming title thereto. (McCaughal v. Ryan, 27 Barb. 376.)

As to the effect of alienage upon titles to lands. (Leggett v. Dubois, 5 Paige, 114; Johnson v. Hart, 3 Johns. Cas. 322; People v. Conklin, 2 Hill, 67; Jackson v. Etz, 5 Cow. 314; Johnston v. Spicer, 107 N. Y. 185, containing a history of legislation on subject of escheats.)

Feudal tenures abolished.— § 11. All feudal tenures of every description, with all their incidents, are declared to be abolished, saving however, all rents and services certain which at any time heretofore have been lawfully created or reserved.

[Section 12 of article I of the amended constitution of 1846, without change.]

Allodial tenures.— § 12. All lands within this State are declared to be allodial, so that, subject only to the liability to escheat, the entire and absolute property is vested in the owners, according to the nature of their respective estates.

[Section 13 of article I of the amended constitution of 1846, without change.]

Grants by the French government are not a legal title. (Jackson v. Ingraham, 4 Johns. 163.)

The title to lands under water in navigable rivers where the tide ebbs and flows is in the people. (Gould v. Hudson R. R. Co., 6 N. Y. 522; Kerr v. W. S. R. R. Co., 127 N. Y. 269.)

Leases of agricultural lands.—§ 13. No lease or grant of agricultural land, for a longer period than twelve years, hereafter made, in which shall be reserved any rent or service of any kind, shall be valid.

[Section 14 of article I of the amended constitution of 1846, without change.]

A lease of agricultural lands for twelve years, with a covenant of renewal for twelve years, if the lessor should live, is void as to the renewal, but valid for the original term. (Hart v. Hart, 22 Barb. 606.)

In consideration of a covenant to support the plaintiff for life, she conveyed her real property for life, and certain personal estate, and agreed to devise a certain parcel of land; held not a lease under this section. (Stephens v. Reynolds, 6 N. Y. 454.)

To bring a lease within this section, it must reserve rent, as rent, payable in money or otherwise at stated periods. A grant or lease of land for life for a specified consideration, whether payable in installments or at one time, is not within the meaning of this provision. (Parsell v. Stryker, 41 N. Y. 480.)

Agricultural land may be leased for other than agricultural purposes for a longer period than twelve years if the lease contains a restriction as to their use. (Odell v. Durant, 62 N. Y. 524.)

Where two leases are executed at the same time, for the same lands, for eight and twelve years respectively, both are void. (Clark v. Barnes, 76 N. Y. 301.)

A lease by a doweress for a certain term, and if at the expiration she be living, then for her natural life; held, a sale and, therefore, not within this section. (Rutherford v. Graham, 4 Hun, 796.)

A judgment of foreclosure estops the parties from setting up that the lease was void because of agricultural lands leased for longer than twelve years. (Witherbee v. Stover, 23 Hun, 27, distinguishing the case of Odell v. Durant, 62 N. Y. 524.)

This prohibition does not amount to a prohibition of the creation of estates for life in such lands. (Parish v. Rogers, 20 App. Div. 279.) (1897.)

A lease of the right to mine and carry away iron ore found under the surface of a farm and as incidental thereto to erect and build necessary structures and roads, held not to be a lease of agricultural land. (Mass. Nat. Bank v. Shinn, 163 N. Y. 360.) (1900.)

Fines and quarter-sales abolished.— § 14. All fines, quarter-sales or other like restraints upon alienation, reserved in any grant of land hereafter to be made, shall be void.

[Section 15 of article I of the amended constitution of 1846, without change.]

A reservation, in a conveyance in fee, of a right of purchase by the grantor, or his representatives, where the property is offered for sale by the grantee or his representatives, and a reservation of a right to a portion of the sale money when the property is sold, are illegal restraints upon the power of alienation. (DePeyster v. Michael, 6 N. Y. 467.)

Purchase of lands of Indians.— § 15. No purchase or contract for the sale of lands in this State, made since the fourteenth day of October, one thousand seven hundred and seventy-five; or which may hereafter be made,

of, or with the Indians, shall be valid, unless made under the authority, and with the consent of the Legislature.

[Section 16 of article I of the amended constitution of 1846, without change.]

While the word "Indians" is used in the plural it includes the purchase from a single Indian. (Goodell v. Jackson, 20 Johns. 693; Lee v. Glover, 8 Cow. 189.)

The policy of the state has been to prohibit all private dealings with and purchases from Indians, except under the supervision of public officials and with the consent of the legislature. (Seneca Nation v. Christie, 126 N. Y. 122; Fellows v. Denniston, 23 id. 420.)

Under a decision made in 1786 by commissioners appointed by the states of Massachusetts and New York, and under a treaty between the Tonawanda nation of Seneca Indians and the United States, the state of New York exercises exclusive sovereignty and jurisdiction over said Indians and the laws held by such nation or by individual members thereof. (Jemison v. Bell Telephone Co., 186 N. Y. 493, affg. 109 App. Div. 911.

Common law and acts of the colonial and State Legislatures.— § 16. Such parts of the common law, and of the acts of the Legislature of the colony of New York, as together did form the law of the said colony, on the nineteenth day of April, one thousand seven hundred and seventy-five, and the resolutions of the Congress of the said colony, and of the convention of the State of New York, in force on the twentieth day of April, one thousand seven hundred and seventy-seven, which have not since expired, or been repealed or altered; and such

acts of the Legislature of this State as are now in force, shall be and continue the law of this State, subject to such alterations as the Legislature shall make concerning the same. But all such parts of the common law, and such of the said acts, or parts thereof, as are repugnant to this Constitution, are hereby abrogated.

[Section 17 of article I of the amended constitution of 1846, amended, by striking out the part of such section 17 as related to the appointment and duties of the codification commissioners.]

Only so much of the common law of England was in force in this state as was applicable to our circumstances and condition, and therefore the English doctrine of easements in light and air never prevailed. (Myers v. Gemmel, 10 Barb. 537.)

The English statute of charitable uses is no part of the law of this state. (Dutch Church in Garden St. v. Mott, 7 Paige's Ch. 77; Holland v. Alcock, 108 N. Y. 312, citing Williams v. Williams, 8 id. 525, and Bascom v. Albertson, 34 id. 584; and containing a collation and discussion of the nature and history of the English doctrine of charitable uses.)

The statute law of the mother country, when introduced by consent, became part of the common law of this state. (Bogardus v. Trinity Church, 4 Paige's Ch. 177, 198.)

An English statute which by this section is made the common law of the state will be presumed to be the common law of another state, in absence of proof to the contrary. Cahill Iron Works v. Pemberton, 30 Abb. N. C. 450.)

By the rules of the common law of England, which together with the legislative acts of the colony of New York, did form the law of the colony on April, 1775, an innkeeper had a lien upon goods owned by a third party in the rightful possession of agent for the value of his entertainment. That law was continued in force by the several constitutions of

this state. The lien law (chap. 418, L. 1897, § 71) is declaratory of that rule, and is not violative of any constitutional right. Inasmuch as public policy requires that an innkeeper should be held to an extraordinary and severe liability, his protection should be equal to that liability; and this the legislature had the right to extend to him in said statute, although it involves the goods of a third party. The authorities collected and exhaustively discussed in Waters Co. v. Gerard, 189 N. Y. 302, affg. 106 App. Div. 431. (Oct. 1907.)

Grants of land made by the king of Great Britain since 1775; prior grants.—§ 17. All grants of land within this State, made by the king of Great Britain, or persons acting under his authority, after the fourteenth day of October, one thousand seven hundred and seventy-five, shall be null and void; but nothing contained in this Constitution shall affect any grants of land within this State, made by the authority of the said king or his predecessors, or shall annul any charters to bodies politic and corporate, by him or them made before that day; or shall affect any such grants or charters since made by this State, or by persons acting under its authority; or shall impair the obligation of any debts, contracted by the State or individuals, or bodies corporate, or any other rights of property, or any suits, actions, rights of action, or other proceedings in courts of justice.

[Section 18 of article I of the amended constitution of 1846, without change.]

This section, by declaring null all patents of lands in the state granted by the king subsequent to October 14, 1775, impliedly confirmed those granted prior to that date. (People v. Clark, 10 Barb. 120; affd. on appeal, 9 N. Y. 349.)

This section is not a restraint upon legislative power. Its object was simply to leave the charters referred to intact as far as the operation of the constitution itself was concerned. (Demarest v. Mayor, 74 N. Y. 161.)

L. 1873, chap. 335, abolishing the board of assistant aldermen of the city of New York, and transferring their powers and duties to the board of aldermen, is constitutional. (Id.)

Damages for injuries causing death.— § 18. The right of action now existing to recover damages for injuries resulting in death, shall never be abrogated; and the amount recoverable shall not be subject to any statutory limitation.

[This section is new. By virtue of its provisions that part of section 1904 of the Code of Civil Procedure, limiting the amount of damages recoverable for negligence causing death, will be unconstitutional after January 1, 1895.]

The abolition of the amount recoverable in actions for injury resulting in death did not affect accrued causes of action. (Isola v. Weber, 147 N. Y. 329.) (1895.)

Employers' liability act is a general act which applies to all actions brought after its passage by a servant against his master to recover damages for personal injuries arising from the master's failure to supply proper and safe appliances for the use of the servant. The provision relative to notice only affects the remedy and does not destroy any right of action conferred by the common law or statute and is constitutional. (Gmaehle v. Rosenburg, 83 App. Div. 339.) (1903.)

ARTICLE II.

Qualification of voters.—Section 1. Every male citizen of the age of twenty-one years, who shall have been a citizen for ninety days, and an inhabitant of this State one year next preceding an election, and for the last four months a resident of the county, and for the last thirty days a resident of the election district in which he may offer his vote, shall be entitled to vote at such election in the election district of which he shall at the time be a resident, and not elsewhere, for all officers that now are or hereafter may be elective by the people, and upon all questions which may be submitted to the vote of the people, provided that in time of war no elector in the actual military service of the State, or of the United States, in the army or navy thereof, shall be deprived of his vote by reason of his absence from such election district; and the Legislature shall have power to provide the manner in which and the time and place at which such absent electors may vote, and for the return and canvass of their votes in the election districts in which they respectively reside.

[Section 1 of article II of the amended constitution of 1846 amended by requiring a citizenship of ninety days, instead of ten, before election.]

Mere declaration does not constitute residence. The facts determine. (Silvey v. Lindsay, 107 N. Y. 59.)

Residence means the act of being seated or settled in a place. It imports not only personal presence in a place, but an attachment to it by those acts or habits which express the closest connection between a person and a place. (Matter of Collins, 64 How. Pr. 63.)

Residence may be acquired by living on a lighter attached to a pier. (Id.)

The legislature may affix ineligibility to office as a punishment for crime and not encroach upon the constitutional privilege of the elector (Barker v. People, 3 Cow. 686); or that no supervisor shall be superintendent of the poor. (People ex rel. Furman v. Clute, 50 N. Y. 451, 458.)

The right to vote is a political right and not within the privileges and immunities guaranteed to the citizen. (People v. Barber, 48 Hun. 198.)

A law prohibiting a person from voting who will not take an oath to the effect that he has always been faithful in his allegiance is unconstitutional. (Green v. Shumway, 39 N. Y. 425.)

A female is "a person not duly qualified to vote under the laws of this state." (People v. Barber, 48 Hun, 198.)

A law authorizing women to vote for school commissioners is unconstitutional, school commissioners being "thereafter made elective by the people." (Matter of Gage, 141 N. Y. 112.)

The provisions of this section that an elector must vote in the election district of which he shall be a resident does not prevent the legislature establishing a polling place outside of the limits of the election district. (People ex rel. Lardner v. Carson, 155 N. Y. 491.) (1898.)

The requirements as qualifications for voting at a village election, that voter or his wife must be owner of property and assessed, are valid, the legislature having power to prescribe the qualifications where trustees are to be voted for or money is to be raised. (Spitzer v. Village of Fulton, 33 Misc. Rep. 257.) (1901.) (Affd., 172 N. Y. 285.) (1902.)

Arrest of registered elector while attempting to vote upon charge of false resignation illegal. (People v. Hochstim, 76 App. Div. 25.) (1902.)

An act requiring electors in cities of one million or more inhabitants to sign the registry book is not unconstitutional. (Matter of Ahern v. Elder, 195 N. Y. 493.) (1909.)

The name of a voter appearing upon a new register will not be stricken therefrom merely because his place of residence is not stated, for he cannot be deprived of his constitutional right to vote because the board of inspectors

failed to perform a clerical duty, imposed by the election law, of filling in his place of residence. (Matter of Mathews, 143 App. Div. 561.) (1911.)

An act forbidding a committee of any party or independent body authorized either to make nominations or to fill vacancies to nominate a candidate of another party or independent body for the same office is invalid and unconstitutional. (Matter of Callahan, 200 N. Y. 59.) (1910.)

Persons excluded from the right of suffrage.— § 2. No person who shall receive, accept, or offer to receive, or pay, offer or promise to pay, contribute, offer or promise to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at an election, or who shall make any promise to influence the giving or withholding any such vote, or who shall make or become directly or indirectly interested in any bet or wager depending upon the result of any election, shall vote at such election; and upon challenge for such cause, the person so challenged, before the officers authorized for that purpose shall receive his vote, shall swear or affirm before such officers that he has not received or offered, does not expect to receive, has not paid, offered or promised to pay, contributed, offered or promised to contribute to another, to be paid or used, any money or other valuable thing as a compensation or reward for the giving or withholding a vote at such election, and has not made any promise to influence the giving or withholding of any such vote, nor bet or wager depending upon the result of such election. The Legislature shall enact laws excluding from the right of suffrage all persons convicted of bribery or any infamous crime.

[Section 2 of article II of the amended constitution of 1846, amended. The last sentence of the 1846 constitution was as follows: "The legislature of the session thereof next after the adoption of this section, shall, and from time to time thereafter may, enact laws excluding from the right of suffrage all persons convicted of bribery or of any infamous crime."]

Under subdivision 10 of section 34 of the election law, a person convicted of a felony by verdict of a jury has no right to vote (unless he shall have been pardoned and restored to the rights of citizenship), although sentence was suspended and no judgment of conviction was entered. "Conviction," as used in said law, means the actual finding of the jury that the defendant is guilty. The legislature has power under section 2 of article 2 of the constitution to make this disqualification; and one so disqualified who votes, or attempts to vote, is guilty of a felony under section 411 of the Penal Code. (People v. Fabian, 126 App. Div. 89.) (May, 1908.)

(See Penal Code, §§ 411, 41p, 41q; Election L., §§ 30, 111.)

One who has been convicted of a felony while a minor, and has served out his term before attaining majority, is disqualified as an elector. (Hamilton v. People, 57 Barb. 625. See People ex rel. Furman v. Clute, 50 N. Y. 451.)

Certain occupation and conditions not to affect residence.— § 3. For the purpose of voting, no person shall be deemed to have gained or lost a residence, by reason of his presence or absence, while employed in the service of the United States; nor while engaged in the navigation of the waters of this State, or of the United States, or of the high seas; nor while a student of any seminary of learning; nor while kept at any almshouse, or other asylum, or institution wholly or party supported at public expense or by charity; nor while confined in any public prison.

[Section 3 of article II of the amended constitution of 1846 amended by inserting after the word "asylum" the words "or other institution wholly or partly supported," and after the word "expense" the words "or by charity."]

Not applicable to fishermen who elect their residence in the place of their business. (1871.) (Opinion of Atty.-Gen. 585.)

A prisoner though not strictly confined and under an irregular or illegal commitment cannot gain a voting residence. (People v. Cady [Ct. of App.], 60 N. Y. St. Rep. 474.)

The Soldiers' Home at Bath is an "asylum" hereunder. An inmate must find his voting qualifications in other facts than a declaration of his intention to reside there. (Silvey v. Lindsay, 42 Hun, 116, affd. in 107 N. Y. 55.)

This section does not prevent a student from abandoning his previous home and of acquiring a residence at the place where the seminary which he attends is situated. (Matter of Ward [Sp. T.], 29 Abb. N. C. 187.)

When a person becomes an inmate of a soldiers' home, for the sole purpose of receiving the benefits therein conferred, his former residence must be considered his domicile for citizenship. (Matter of Smith, 44 Misc. Rep. 384.) (1904.)

A soldier may acquire a residence in the locality in which he is placed by reason of his employment in the service of the United States. (Matter of Cunningham, 45 Misc. Rep. 206.)

Registration and election laws to be passed.—§ 4. Laws shall be made for ascertaining, by proper proofs, the citizens who shall be entitled to the right of suffrage hereby established, and for the registration of voters; which registration shall be completed at least ten days before each election. Such registration shall not be required for town and village elections except by express provision of law. In cities and villages having five thousand inhabitants or more, according to the last

preceding state enumeration of inhabitants, voters shall be registered upon personal application only; but voters not residing in such cities or villages shall not be required to apply in person for registration at the first meeting of the officers having charge of the registry of voters.

[Section 4 of article II of the amended constitution of 1846 amended by adding all after the word "established."]

Manner of voting.— § 5. All elections by the citizens, except for such town officers as may by law be directed to be otherwise chosen, shall be by ballot, or by such other method as may be prescribed by law, provided that secrecy in voting be preserved.

[Section 5 of article II of the amended constitution of 1846 amended by transposing the words "shall be by ballot" from after the word "citizen" to after the word "chosen," and by adding all after the word "ballot."]

The amendment of this section authorizes the legislature to adopt a mechanical device for recording and counting votes.

While the use of a voting machine may make it more difficult to ascertain the true vote when the machine works defectively the use of the machine does not necessarily impair the constitutional rights of the elector. (The People ex rel. Deister v. Winterworth, 194 N. Y. 99.) (1909.)

Supervisors may be elected by ayes and nays, or by a show of hands, or other division, if the legislature so authorizes. (People ex rel. Clancy v. Supervisors, 139 N. Y. 524, 528.)

Registration and election boards to be bi-partisan, except at town and village elections.— § 6. All laws

creating, regulating or affecting boards of officers charged with the duty of registering voters, or of distributing ballots at the polls to voters, or of receiving, recording or counting votes at elections, shall secure equal representation of the two political parties which, at the general election next preceding that for which such boards or officers are to serve, cast the highest and the next highest number of votes. All such boards and officers shall be appointed or elected in such manner, and upon the nomination of such representatives of said parties respectively, as the Legislature may direct. Existing laws on this subject shall continue until the Legislature shall otherwise provide. This section shall not apply to town meetings, or to village elections.

[New.]

(See L. 1894, chap. 348.)

When a canvass has been completed, under the statutory provisions for its conduct existing at the time, the legislature cannot create a new tribunal with power to recanvass the election and to award possession of the office to another claimant. (Matter of Metz v. Maddox, 189 N. Y. 460, revg. 120 App. Div. 814, and 121 id. 147.)

ARTICLE III.

Legislative powers.—Section 1. The legislative power of this State shall be vested in the Senate and Assembly.

[Section 1 of article III of the amended constitution of 1846 amended by changing the word "a" before "senate" to "the." This amendment was not referred to by the re-

visers, but as the people voted on the "Revised Constitution," it seems to have been effected.]

The constitution confers upon the legislature the whole legislative power, unlimited save by the restrictions of the state and federal constitutions. (People v. West, 106 N. Y. 293; People ex rel. v. Keeler, 99 id. 463; Bertholf v. O'Reilly, 74 id. 509; People ex rel. v. Flagg, 46 id. 401; Bank of Chenango v. Brown, 26 id. 467; People v. Learned, 5 Hun, 626.)

If no authority were delegated to the legislature by the constitution it would still have the power to exercise and declare the will of the people. (People v. Young, 18 App. Div. 162.) (1897.)

Subject to the limitations of the constitution, the legislature may change or abrogate a right derived from legislative authority (People ex rel. McCarthy v. French, 10 Abb. N. C. [Gen. T.] 418); may interfere with vested rights (Butler v. Palmer, 1 Hill, 324); may directly control the local public affairs of any civil division of the state. (People v. Tweed, 63 N. Y. 202.)

Under our government, the powers are divided into legislative, judicial and executive branches, each restricted to the exercise of its own legitimate functions; and unless a constitutional warrant can be found, no one of them should be permitted to be made the domain of the other. (People ex rel. Sabold v. Webb [Sp. T.], 23 N. Y. St. Rep. 325.)

The legislature may provide that an act shall take effect on the happening of a future event, certain or uncertain (Corning v. Greene, 23 Barb. 33; People v. Fire Association, 92 N. Y. 311); but, except as authorized by the constitution, cannot divide the responsibility of enacting laws, as by referring their enactment to a popular vote (Thorne v. Cramer, 15 Barb. 112; Bradley v. Baxter, 15 id. 122; People ex rel. v. Stout, 23 id. 349; Corning v. Greene, id. 33; Barto v. Himrod, 8 N. Y. 483); but it may enact that the electors of a village may determine what parts of the general village law shall apply to their village (Bank of Chenango v. Brown, 26 N. Y. 467); or that a provision is not to be effective until approved by a vote of the inhabitants of a municipality. (Bank of Rome v. Rome, 18 N. Y. 38.)

The legislature cannot declare in advance the effect of subsequent legislation on existing statutes. (Mongeon v. People, 55 N. Y. 613.)

The legislature cannot control future legislation upon mat-

ters of a public interest. (People v. L. I. R. R. Co., 9 Abb. N. C. 181.)

An act authorizing the supreme court, on application, to order gates to be erected by a railroad company at a certain street, is not a delegation of legislative power. (People v. L. I. R. R. Co., 134 N. Y. 506.)

The legislature may determine whether a special act is necessary. (People v. Bowen, 21 N. Y. 517; U. S. Trust Co. v. Brady, 20 Barb. 119.)

The taxing power of the legislature for public purposes is unlimited, except as restrained by the constitution. In re Van Antwerp, 56 N. Y. 261; McLaughlin v. Miller, 124 id. 510; State v. County of Kings, 125 id. 312.) Thus it may cure defects and confirm taxes where there was jurisdiction to impose them. (People v. McDonald, 69 id. 362; Terrel v. Wheeler, 123 id. 76; Cromwell v. MacLean, 123 id. 474.) It may confirm a tax imposed where the assessment omits property which might originally have been exempted. (Van Deventer v. Long Island City, 139 id. 133.) It may delegate to a municipality the power to tax for the expenses of the local government. (Matter of Petition of Zborowski, 68 id. 88.)

The power of the legislature to apportion taxes is as broad as the taxing power itself. (Matter of Sackett St., 4 Hun, 92, affirmed in 74 N. Y. 95.)

The legislature may authorize the land of the state to be assessed for local improvements. (Hassan et al. v. Rochester, 67 N. Y. 528.)

The legislature may sanction an improvement or expenditure which it could previously authorize, and authorize an assessment therefor. (Matter of Sackett St., 74 N. Y. 95.) It cannot compel an adjoining town to be taxed for the payment of debts previously contracted by a city. (Matter of Assessment, 60 N. Y. 398.)

The legislature may make a tax deed of the comptroller presumptive evidence that the sale was regular. (Hand v. Ballou, 12 N. Y. 541.)

The legislature cannot tax imports (People v. Maring, 3 Keyes, 374); cannot tax national banks (People ex rel. Gallatin Nat. Bank v. Commissioners, 67 N. Y. 516); but can tax capital employed in the business exporting cotton to foreign countries. (People ex rel. v. Bd. of Tax Comrs. of N. Y., 10 Hun, 255.)

The legislature may ratify and create a liability on the part of the state for property voluntarily furnished or valuable services rendered at request of a state officer. (O'Hara v. State, 112 N. Y. 146.) It may relinquish a claim of the state or waive its remedies for fraud. (People v. Stephens, 71 N. Y. 527.) It may enlarge the time within which a claim against the state may be filed, if it would not already be outlawed as between individuals. (Parmenter v. State, 135 id. 154.)

It cannot confer jurisdiction on the court of claims to hear or allow a claim against the state, which, as between individuals, would be barred by the statute of limitations. (McDougall v. State, 109 N. Y. 73; Gates v. State, 128 id. 221.)

The legislature may validate the act of a municipality, invalid because of procedure, where the municipality had jurisdiction of the subject-matter (Tifft v. City of Buffalo, 82 N. Y. 204); may ratify an ultra vires contract for a public purpose of a municipality (Brown v. Mayor, etc., 63 N. Y. 239); may authorize local regulations and commit the power of making them to local bodies or the people of localities (Tanner v. Albion, 5 Hill, 121; Clarke v. City of Rochester, 28 N. Y. 605); may authorize a municipality to regulate hawking and peddling (Village of Stamford v. Fisher, 140 id. 187); may establish civil divisions (People ex rel. Wood v. Draper, 15 id. 532); may erect a county (Rumsey v. People, 19 id. 41), but only when it can provide for the new county taking its place in the political and judicial divisions of the state (Lanning v. Carpenter, 20 id. 447); may authorize a village to dissolve its incorporation (Blauvelt v. Village of Nyack, 9 Hun, 153); may distribute the powers of local government between county and city (People ex rel. Taylor v. Dunlap, 66 N. Y. 162); may provide that claims be presented to a city council for a certain time before action is brought (Reining v. City of Buffalo, 102 id. 308); may validate a claim against a town, supported by a moral consideration, but irregular. (Wrought Iron Bridge Co. v. Attica, 119 id. 204.)

The legislature cannot vest the performance of specific local and municipal duties in a state board. (People v. Acton, 48 Barb. 524.)

The legislature has no judicial authority and cannot control the courts in respect to the construction of statutes

arising before the declaratory statute. (Ins. Co. v. Jenkins, 16 N. Y. 424.) It may conduct a legislative but not a judicial inquiry. (People ex rel. v. Webb [Sp. T.], 23 N. Y. St. Rep. 325; People v. Otis, 90 N. Y. 48.)

The legislature may create inferior local courts (Sill v. Village of Corning, 15 N. Y. 297); may authorize city courts to issue writs of mandamus (People ex rel. v. Green, 58 id. 295); may regulate their jurisdiction, within constitutional limitations. (Butterfield v. Rudde, 58 id. 489.)

The legislature may modify the rules of evidence. (Howard v. Moot, 64 N. Y. 262; People v. Turner, 117 id. 227.) But retroactive laws of this character must be strictly construed. (People ex rel. v. Ryder, 124 id. 500.)

The legislature cannot deny to a person who has been illegally deprived of his property access to the courts for relief (Gilman v. Tucker, 128 N. Y. 190, 202); but may deprive a party of the aid of a court of equity to remove the apparent lien of a void assessment upon his land. (Lennon v. Mayor, 55 N. Y. 361.)

The legislature may direct the enforcement of valid judgments by imprisonment, if property cannot be found. (People ex rel. Underwood v. Daniel, 50 N. Y. 274.)

The legislature cannot provide for the surrender of fugitives from justice of foreign countries (People ex rel. v. Curtis, 50 N. Y. 321); cannot validate a void contract. (N. Y. & Oswego R. R. Co. v. Van Horn, 57 N. Y. 473.)

The legislature cannot infringe upon the liberty or the property rights of persons within the protection of the constitution, under the guise of the police power. (People v. Gilson, 109 N. Y. 389.)

The legislature cannot contingently deprive a person of property the right to which was perfect under prior laws. (Burch v. Newbury, 10 N. Y. 374.)

The legislature may confirm an irregular election. (People v. Flanagan, 66 N. Y. 237.)

The legislature may regulate or limit the height of buildings. (People ex rel. v. D'Oench, 111 N. Y. 359.)

The legislature may authorize the sale of land of infants, in being or unborn (Leggett v. Hunter, 19 N. Y. 445); but not of adults without their consent, except for taxes or assessments. (Brevoort v. Grace, 53 N. Y. 245.)

The legislature may distribute the functions of supreme court commissioner, although the office has been abolished. (Hayner v. James, 17 N. Y. 316.)

The legislature may create a commission of investigation by joint resolution. (People v. Learned, 5 Hun, 626.)

The legislature cannot create a debt of the state beyond the amount authorized by the constitution. (People v. Supervisors of Kings, 52 N. Y. 556.)

The legislature may determine what estate shall be taken by the state in land acquired for public purposes, although the public use be not necessarily permanent. (Eldridge v. Binghamton, 120 N. Y. 309.)

The legislature cannot arbitrarily declare property a public nuisance for the purpose of devoting it to destruction. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

The power to divide counties and towns, and erect new ones, is legislative in its character and is conferred upon the legislature by the general grant of legislative powers. (People ex rel. Henderson v. Supervisors of Westchester, 147 N. Y. 1.) (1895.)

The legislature cannot annul the final judgment of a court convicting an accused person of a crime. (Roberts v. State, 30 App. Div. 106.) (1898.)

The legislature can apportion and cast assessments itself without notice to property-owners. (Matter of Curren, 25 Misc. Rep. 432; affd., 38 App. Div. 82.)

The legislature can revise and correct its enactments so as to accomplish in the final result the same justice which it may be presumed it would have provided for in the first instance, if it could have foreseen the actual results to follow upon its first enactments. Where an assessment for a public improvement has been imposed upon the owners of abutting property it may, after the assessment has been levied and paid, direct that the municipality refund to the owners assessed the amount so paid on such assessment. (People v. Molloy, 35 App. Div. 136.) (1898.)

The power of congress to regulate interstate commerce does not preclude the exercise of the police power of the state so far as it may prohibit the bringing into the state anything detrimental to the health of the state and does not render inoperative the state statutes on the subject.

(Crossman v. Lurman, 57 App. Div. 393.) (1901.) (Affd., 171 N. Y. 329.) (1902.)

The legislature has power to curtail or abolish the right to appeal. (People v. Rutherford, 47 App. Div. 209.) (1900.)

The legislature may authorize the city to insert in contracts for city improvements a provision requiring the contractor to keep the streets in good repair for a period of ten years. It may authorize the expense of repaving a street to be defrayed by local assessment. (People v. City of Buffalo, 52 App. Div. 157.) (1900.)

The legislature has not the power to direct that a constitutionally elective office shall be filled at a date earlier than that of the election which next precedes the expiration of the term of the existing incumbent. (People v. Treacy, 46 App. Div. 216.) (1899.)

While the legislature might not delegate authority to a municipal body without qualification to determine as to the necessity of a railroad crossing it may authorize the supreme court to review the determination of the common council of the city in favor of extending a street over the existing railroad. (Matter of Delavan Avenue, 167 N. Y. 256.) (1901.)

The legislature has the power to require a street railway corporation to keep the railway strip in repair as directed by the local authorities and to impose all reasonable regulations as to the exercise of its corporate privileges. (Village of Mechanicville v. Stillwater & Mechanicville St. R. R. Co., 35 Misc. Rep. 513.) (1901.)

The legislature has the power to require an infant plaintiff to give security for costs. (Venanzio v. Weir, 64 App. Div. 483.) (1901.)

The legislature may legalize acts of the commissioners to construct a sewer in the city done under statute inadvertently scheduled as repealed and subsequently re-enacted. (McKee Land & Imp. Co. v. Williams, 63 App. Div. 553.) (1901.)

The legislature has no power over a nonresident to make him personally liable for a tax assessed against his personal property within this state. (City of New York v. McLean, 57 App. Div. 601.) (1901.)

The legislature may take away statutory powers of

boards of supervisors as well as add to them. (County of Queens v. Petry, 54 App. Div. 115.) (1901.)

The legislature has the right to require as a condition of obtaining a conveyance under a city tax sale that the purchaser pay prior tax liens for which the property had previously been sold and bid in by the city. (People v. City of Buffalo, 63 App. Div. 563.) (1901.)

The constitution does not forbid retroactive legislation except where it affects rights which existed before its passage. (Matter of Pell, 60 App. Div. 286.) (1901.)

There is not and never has been any constitutional limitation or restraint upon the power of taxation by the legislature. The power of taxing and the power of apportioning taxation are identical and inseparable. An act providing that property should be assessed at a certain sum per linear front foot for cost of constructing sewer is constitutional. (People ex rel. Scott v. Pitt, 64 App. Div. 316.) (1901.) (Affd., 169 N. Y. 521.)

Statutes requiring street railroad corporations to keep railroad strip in repair is within the power of the legislature, though applying to railroad companies already in operation. (Doyle v. City of New York, 58 App. Div. 588.) (1901.)

An act authorizing commissioners named therein to audit certain outstanding claims against the city of Syracuse for indebtedness incurred in excess of appropriations and in violation of charter restrictions but which the city was equitably obligated to pay, held constitutional. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

The legislature has power to distribute the cost of a local improvement or some part of it upon property located upon the street where the improvement is made according to the frontage lands or upon the basis of a specified sum per linear foot, and the property-owner is not entitled to be heard at any time upon the justice or propriety of the principle upon which the assessment is to be apportioned. (People ex rel. Scott v. Pitt, 169 N. Y. 521.) (1902.)

Statutes purporting to legalize an assessment for local improvement and passed after the entry of the judgment declaring the assessment invalid are operative so far as they relate to those acts which the legislature might have dispensed with or ordered done before the proceedings were

instituted. (Loomis v. City of Little Falls, 66 App. Div. 299.) (1901.) (Affd., 176 N. Y. 31.) (1903.)

The legislature has the right to establish, increase, abolish or reduce the salary attached to office of alderman during term of office. (Young v. City of Rochester, 73 App. Div. 81.) (1902.)

It is within the province of the legislature as against a corporation of its own creation to say what shall constitute a taking of private property for public purposes, and the legislature in creating a municipal corporation has the right to create a tribunal for assessing the damage which individuals may sustain by reason of the taking of their property for public purposes and the corporation cannot question the constitutionality of such a tribunal. (Matter of Comesky, 83 App. Div. 137.) (1903.)

The legislature has power to extend the limitations of an existing municipality by annexing thereto territory which will be made liable for the pre-existing debts of the municipality without regard to the benefit accruing to the territory annexed. (Hollister v. City of Rochester, 41 Misc. Rep. 559.)

Semble that the provisions of the labor law as to prevailing rate of wages so far as it relates to the direct employees of the state or of a municipality thereof is constitutional. (Ryan v. City of New York, 177 N. Y. 271.) (1903.)

Legislature cannot authorize municipality to enter into contract with officer so as to prevent subsequent legislation abolishing office. (People ex rel. Devery v. Coler, 173 N. Y. 103.) (1903.)

The legislature has power to permit for public purpose an examination of the records in the custody of the county clerk without making compensation to him. (Wuest v. City of New York, 89 App. Div. 262.) (1903.)

The legislature may authorize a city to acquire by eminent domain an easement over lands owned and occupied by a railroad company and acquired by it by purchase. Semble. That even if lands of railroad company had been acquired by eminent domain the legislature could still authorize another to occupy them for a public use which did not interfere with the prior use. (Matter of City of Gloversville, 42 Misc. Rep. 559.) (1904.)

The legislature has the absolute power to require a municipal corporation to apply the property held by it for such public use as the legislature shall direct. (Potter v. Collins, 19 App. Div. 392.) .

The legislature has power to abridge the term of office or abolish an office created by an act of the legislature, citing Coch v. Mayor, 152 N. Y. 72. (Matter of Lowman, 95 App. Div. 32.) (1904.)

The legislature has power to delegate to inferior governmental bodies, or to the people of limited location, powers and functions which, although legislative in form, and in their nature administrative rather than strictly and exclusively legislative. Accordingly the provisions of the county law (L. 1892, chap. 686, §§ 31, 32, 33), relating to the changing of the site of county buildings and offices from one part of a county to another, do not constitute a violation of the constitutional provision (art. 3, § 1), vesting the legislative power of the state in a senate and assembly. (Stanton v. Board of Supervisors, 191 N. Y. 428, affg. 112 App. Div. 877.)

Legislative Powers.

Section 3 of the labor law providing that the rate of wages paid employees upon public works shall be not less than the prevailing rate of wages for similar work in the vicinity is constitutional. (Ryan v. City of New York, 177 N. Y. 271.) (1904.)

Section 8 of the tax law (L. 1896, chap. 908) providing for the taxation of "rents in any lease in fee * * * shall be taxable to the person entitled to receive the same as personal property" is a valid exercise of the legislative power. (Woodruff v. Oswego Starch Factory, 177 N. Y. 23.) (1903.)

The function of rate making can be devolved by the legislature on other officers and the question of what rates are reasonable can be given a judicial or *quisi*-judicial aspect. (People ex rel. C. P. R. R. Co. v. Wilcox, 194 N. Y. 383.) (1909.)

The legislature may pass a curative act legalizing a defective assessment. (People ex rel. Am. Ex. Nat. Bank v. Purdy, 196 N. Y. 270.) (1909.)

The forest, fish and game commission, acting under the statute, has the power to order the placing of a fishway in a dam. (Matter of Fishway, 131 App. Div. 404.) (1909.)

The legislature has power to direct that actions for injuries caused by defects in streets shall be brought against officers of a municipal corporation instead of the corporation itself. (Scott v. Village of Saratoga Springs, 199 N. Y. —.) (1910.)

A law allowing a city to sell at auction liens held by it upon lands for unpaid taxes to the bidder who should agree to charge the lowest rate of interest, and empowering the purchaser, under certain conditions, to enforce the lien by a sale in a suit of foreclosure, is not unconstitutional. (Gautier v. Ditmar, 144 App. Div. 721.) (1911.)

The provision of a city charter giving to the commissioner of parks discretionary authority to exclude bicycles and other motor vehicles from a certain boulevard is a valid exercise of legislative power (People ex rel. Cavanaugh v. Waldo, 72 Misc. Rep. 416.) (1911.)

A statute requiring the owner of one or more dogs to pay the yearly license fee for each animal to the American Society for the Prevention of Cruelty to Animals, incorporated under a special act, said fee to be applied in defraying the cost of carrying out the provisions of said act, is not unconstitutional either as giving public moneys to or in aid of a private undertaking, or as a grant to the said society of the discretionary power to grant licenses or as not having been passed by a two-thirds vote. (People ex rel. Westray v. Delany, 73 Misc. Rep. 5.) (1911.)

Police Power.

Laws passed in the exercise of the police power, must tend toward the preservation of the lives, health, morals or welfare of the community, and there must be some clear and real connection between the assumed purpose of the law and the actual provisions thereof. (Colon v. Lisk, 153 N. Y. 188.) (1897.)

The state may, by police regulations, so direct the use and enjoyment of the property of the citizen, that it shall not prove pernicious to its neighbors or to the public generally, so long as the exaction is not unreasonable either with reference to its nature or its cost. (Health Dept. of N. Y. v. Rector, etc., of Trinity, 145 N. Y. 32.) (1895.)

It is not usually necessary to the validity of police legislation, that the citizen affected should be heard before he is bound to comply with the direction of the legislature. (Health Dept. of N. Y. v. Trinity, 145 N. Y. 32.) (1895.)

Act prohibiting sale of vinegar containing artificial coloring matter upheld as a valid exercise of police power. (People v. Girard, 145 N. Y. 105.) (1895.)

The regulation of plumbing in cities upheld as an exercise of the police power. (People ex rel. Nechamcus v. Warden of City Prison, 144 N. Y. 529.) (1895.)

The liquor tax law is not a tax law having for its primary purpose the raising of money for the support of government, but is a law enacted under the police power. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

A city ordinance making it unlawful for any person not a resident of the city to sell farm products therein without a license is not a valid exercise of the police power. (City of Buffalo v. Reavey, 37 App. Div. 228.) (1899.)

Prohibition of the use of soft coal is within police power of the state. (Brooklyn v. Nassau El. R. R. Co., 44 App. Div. 462.) (1899.)

A statute providing that no person without a license shall conduct a maternity hospital is within the police power of the state. (People v. Hagen, 52 App. Div. 387.) (1900.)

The legislature has power to compel telegraph and telephone companies using the streets of a city to place their wires in an underground conduit and pay their share of the expense, in the exercise of general police powers of the state. (Matter of City of Geneva v. Geneva Telephone Co., 30 Misc. Rep. 236.) (1900.)

While the police power of state may be used not only to protect public health, but also to prevent a fraud upon the people, statutes passed for that purpose must either in their

title or in the body thereof indicate the purpose sought to be accomplished. (People v. Biesecker, 58 App. Div. 391.) (1901.) (Affd., 169 N. Y. 53.) (1901.)

A provision that tenement-houses not completed, but for which excavations have been commenced, shall be subject only to provisions of tenement-house acts affecting existing tenement-houses is valid, but provision that in such cases the first tier of beams must have been set prior to a certain date is an unreasonable exercise of police power. (Signell v. Wallace, 35 Misc. Rep. 656.) (1901.)

Anti-scalpers' law unconstitutional. Is not a valid exercise of the police power of the state. (People v. Caldwell, 64 App. Div. 46.) (1901.) (Affd., 168 N. Y. 671.) (1901.)

Railroad grade crossing act under which a railroad company may take proceedings to have a grade crossing abolished is within the police powers of the state. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

Provisions of labor law regulating hours of employment in bakeries valid exercise of police power. (People v. Lochner, 73 App. Div. 120.) (1902.) (Affd., 177 N. Y. 145.) (1903.)

Police power in respect to articles of food stated: 1. That the legislature cannot forbid or wholly prevent the sale of a wholesome article of food. 2. That legislation intended and reasonably adapted to prevent an article being manufactured in imitation or semblance of a well-known article in common use and thus imposing upon consumers or purchasers is valid. 3. That in the interest of public health the legislature may declare articles of food not complying with a specified standard unwholesome and forbid their sale. Law forbidding use of preservatives other than salt in butter held unconstitutional. (People v. Biesecker, 169 N. Y. 53.) (1902.)

Trading stamp law unconstitutional where stamps are exchangeable for articles which are fixed and certain and there is no element of chance involved in the exchange. (People v. Dycker, 72 App. Div. 308.) (1902.)

Statutes prohibiting trade in food on Sunday within police power. (People v. Hagen, 36 Misc. Rep. 349.) (1902.)

It is competent for the legislature under its general police power to impose a new duty for the protection or safety of the public or of persons occupying or in buildings, the violation of which, if it directly and without any intervening cause results in injury or damage, will give rise to a cause of action, and may delegate this authority to a municipal legislature. (Koch v. Fox, 71 App. Div. 288.) (1902.)

A statute providing that a person who manufactures explosive substances in a house occupied for dwelling purposes is guilty of a misdemeanor is within police power. (People v. Lichtmen, 65 App Div. 76.) (1902.)

Grade crossings in cities are quasi-public nuisances and their abolition is within police power. (Lehigh Valley R. R. Co. v. Adams, 70 App. Div. 427.) (1902.)

Act requiring street railways to furnish free transportation to policemen and firemen not within police power. (Wilson v. United Traction Co., 72 App. Div. 233.) (1902.)

Tenement-house act as affecting a building for which permit had been issued but construction not commenced, held constitutional. (City of New York v. Herdje, 68 App. Div. 370.) (1902.)

The confiscation of gambling outfits is within the police power of the state. (People v. Adams, 176 N. Y. 351.) (1903.)

Section 384h, subd. 1, prohibiting any person or corporation contracting with the state or a municipal corporation from requiring more than eight hours work for a day's labor is unconstitutional as not within the police power. (People v. Orange Road Construction Co., 175 N. Y. 84.) (1903.)

Statute requiring registration and certificate of competency of each master plumber, city of New York, held constitutional. (Schnaier v. Navarre Hotel Imp. Co., 82 App. Div. 25.) (1903.)

To justify the state in regulating a business or occupation in behalf of the public it must appear, first, that the interest of the public is general as distinguished from those of a particular class requiring such interference. Second, that the means used are reasonably necessary for the ac-

complishment of the purpose and are not unduly oppressive upon individuals. (Grossman v. Caminez, 79 App. Div. 15.) (1903.)

The legislature may confer upon boards of health power to enact sanitary ordinances having the force of law in the districts over which their jurisdiction extends. An act authorizing the board of health to enact an ordinance prohibiting the sale of adulterated milk constitutional. (People v. Timmermen, 79 App. Div. 565.) (1903.)

The provisions of the transportation law prohibiting gas companies from collecting rental for gas meters furnished to customers held to be within police power of the state. (City of Buffalo v. Buffalo Gas Co., 81 App. Div. 505.) (1903.)

Provisions of sanitary code of New York city forbidding the discharge of smoke from any building, engine or locomotive, held to be a reasonable regulation and constitutional. (People v. Horton, 41 Misc. Rep. 309.) (1903.)

Ordinance prohibiting the keeping or killing of poultry within certain limits without a permit held a valid exercise of police power. (People v. Davis, 78 App. Div. 570.) (1903.)

The provisions of the labor law restricting hours of labor in bakeries is a valid exercise of the police power, relative to the public health. (People v. Lochner, 177 N. Y. 145.) (1903.)

An act requiring school sinks in tenement-houses to be replaced by individual water-closets is a reasonable and proper exercise of the police power. (Tenement-House Department v. Moeschen, 89 App. Div. 526.) (1904.) (Affd., 179 N. Y. 325.) (1904.)

The provisions of the agricultural law prohibiting the sale of oleomargarine is constitutional, so far as it prohibits the sale of oleomargarine which has been changed by the addition of coloring matter from its natural white color to the yellow color of butter, even though the seller declares the true character of the substance at the time of the sale. (People v. Meyer, 89 App. Div. 185.) (1903.)

That part of subdivision 16 of section 640 of the Penal Code making it a misdemeanor to publicly mutilate, etc., the flag of the United States or of the state of New York

is a valid exercise of the police power. That part of said subdivision which prohibits the use of the picture or representation of said flags in connection with the advertisement of merchandise is unconstitutional as infringing upon the personal liberty of the citizen and interfering with his right to engage in lawful business occupations and pursuits, and is not a proper exercise of the police power. (People ex rel. McPike v. Van Decarr, 91 App. Div. 20.) (1904.) (Affd., 178 N. Y. 425.) (1904.)

The legislature has the supreme control of streets and public highways and has the right to regulate and restrict their use. An ordinance prohibiting a hackman from using the streets to solicit patronage without license held constitutional. (People ex rel. Van Norder v. Sewer Commissioners, 90 App. Div. 555.) (1904.)

Statute prohibiting possession of fish and game brought into the state from without the state held unconstitutional as not a valid exercise of the police power. (People v. A. Booth & Co., 42 Misc. Rep. 321.) (1904.)

Chapter 459, Laws of 1903, making it unlawful to employ a child under fourteen years of age in any business while the public schools are in session is a valid exercise of the police power. (City of New York v. Chelsea Jute Mills, 43 Misc. Rep. 266.) (1904.)

The legislature has the right under the police power to prescribe transfers as a regulation of the rate of fare of street railways. (Topham v. Interurban St. Ry., 42 Misc. Rep. 503.) (1904.)

The consolidated school law, as amended by chapter 450, Laws of 1903, section 4, making it unlawful to employ a child under fourteen years of age during any part of the term during which the public schools of the district in which the child resides are in session, is a valid exercise of the police power. An employer acts at his peril, and cannot avoid the penalty prescribed for employing such child, by pleading good faith in acting upon the statement of the child's parents as to its age. (City of New York v. Chelsea Jute Mills, 43 Misc. Rep. 266.) (1904.)

The provisions of the labor law (L. 1897, chap. 415), pro-

hibiting the employment of women in any factory before six o'clock in the morning, or after nine o'clock in the evening of any day, is an unwarranted invasion of the constitutional right of the individual to liberty of person and freedom of contract. (People v. Williams, 51 Misc. Rep. 383.) (Aug., 1906.) (Affd., 116 App. Div. 379.)

The private property right of the owner of deer raised upon his own preserve in this state is subject to the police power of the legislature; and under section 8 of the forest, fish and game law, as amended in 1906, which prohibits shipment of deer or venison, wild or domesticated, a common carrier may refuse to transport such. (Dietrich v. Fargo, 52 Misc. Rep. 200.) (Dec., 1906.)

A person engaged in the liquor traffic has no vested rights in it that cannot be controlled by the police power or the state. (Matter of Clement, 54 Misc. Rep. 352.) (May, 1907.)

The police power of the State is fully competent to regulate the business, to investigate its evil or to suppress it entirely. The manner and extent of regulation rests in the discretion of the governing authority. It is a matter of legislative will only. (Crowley v. Christensen, 137 U. S. 91.)

The provisions of section 17, subdivision 8, of the liquor tax law, as amended by chapter 144, Laws of 1908, to the effect that where a certificate has been cancelled because the premises have been suffered to become disorderly or gambling has been permitted thereon, no certificate shall be issued for said premises to any person for the period of one year from the entry of the final order of cancellation, is a constitutional exercise of the state's police power. (People ex rel. Bernard v. McKee, 59 Misc. Rep. 369.) (1908.)

The statutes regulating the subject of horse-shoeing are unconstitutional and cannot be sustained as a valid exercise of the police power either on the theory that they tend to promote the health, comfort, safety and the welfare of society, or to prevent cruelty to animals. (People ex rel. Beattie, 96 App. Div. 383.) (1904.)

Section 141 of the forest, fish and game law (L. 1900, chap. 20, added by L. 1902, chap. 194), which provides "Wherever in this act the possession of fish or game or the

flesh of any animal, bird or fish is prohibited, reference is had equally to such fish, game, or flesh coming from without the State, as to that taken within the State * * *" is constitutional. (People v. A. Booth & Co., 105 App. Div. 184; 42 Misc. Rep. 321, revd.)

Section 144 of the forest, fish and game law, prohibiting the possession "from without the state" during the close season, is unconstitutional. (People v. Booth & Co., 105 App. Div. 184.) (1905.) (Revg. 42 Misc. Rep. 321.) (1904.)

Section 70e of the agricultural law, as added by chapter 30, Laws of 1902, which prohibits the sale of veal unless four weeks of age at the time of killing; and by section 70f, its shipment unless a certain tag is attached thereto, "stating the name or names of the person or persons who raised the calf, the name of the shipper, the points of shipping and the destination and the age of the calf," is a constitutional exercise of the police power of the state. (People v. Bishop, 106 App. Div. 266.) (1905.)

The police power of a state is lodged in the legislature thereof, and the legislature may delegate such power. But a police officer has only the powers expressly conferred by statute. He has no inherent police power, and while sections 300 and 315 of the charter of New York authorize the police commissioner to "regulate" traffic on the streets of said city, such authorization does not confer power to prohibit traffic. (Peace v. McAdoo, 110 App. Div. 13.) (1905.)

The requirement of a license from a junk dealer and the regulation of such business is a legitimate exercise of the police power of a city. But whether or not a dealer in old iron is a junk dealer depends upon the general character and scope of the business. (City of New York v. Vandewater, 113 App. Div. 456.) (1906.)

A municipal ordinance which prohibits the peddling of fruits, farm or garden produce on the city streets between 5 A. M. and 1 P. M. is void,— being class legislation, and in restraint of trade. (City of Buffalo v. Linsman, 113 App. Div. 584.) (Fourth Dept., May, 1906.)

Section 141 of the forest, fish and game law, which prohibits the possession of game brought from foreign states, is not in violation of the state or federal constitutions. (People v. Waldorf Astoria Hotel, 118 App. Div. 723.) (First Dept., March, 1907.)

Section 97 of the insurance law, added by chapter 326, Laws of 1906, limiting the total expenditures of insurance companies for agents, is not unconstitutional as impairing the obligation of contracts, and is a valid exercise of the police power of the state. (Boswell v. Security Mutual Life Ins. Co., 119 App. Div. 723.) (Third Dept., May, 1907.)

Section 119 of the charter of Greater New York, which allows commissioners, appointed by the mayor, to examine the accounts of public officers of the city, and to take testimony under oath, is not unconstitutional as conferring judicial powers. Such commissioners may investigate the affairs of elective as well as appointive officers; and on the refusal of such officers to testify in such examination, they may be adjudged guilty of contempt. Matter of Hertle, (In re O'Hearn, 120 App. Div. 717.) (1907.) (Affd., 190 N. Y. 531.)

The provisions of the agricultural law prohibiting the selling of milk which has been deprived of its richness, but which is not otherwise unwholesome, and providing a penalty therefor, are not unconstitutional, for the law is aimed at fraudulent sales as well as at sales of milk which is unwholesome, hence penalties may be recovered from a defendant who sells milk deprived of its natural amount of cream, although it still retains the statutory percentage of fats and solids. And a defendant charged with a series of violations of said law may be sued for cumulative penalties in one action. (People v. Koster, 121 App. Div. 852.) (First Dept., Nov., 1907.)

Chapter 422, Laws of 1908, making it a misdemeanor to engage in the business of private detective for hire unless licensed to do so by the state comptroller, is constitutional, being a valid exercise of the police power of the state. An individual who, without such license, undertakes for hire to act as a detective for the purpose of securing evidence upon which to form an action for divorce, is within the prohibition, and is not entitled to recover for disbursements or price of services rendered. (Fox v. Smith, 123 App. Div. 369.)

A statute providing that a person not already engaged in the business of undertaking shall not engage in such business unless he shall have been duly licensed as an embalmer and shall have been employed as an assistant to a licensed undertaker for three years is unconstitutional. Such an act is

not a valid exercise of the police power, since it does not relate to the health, comfort, safety or welfare of society; and its effect is to create a monopoly and build up a class rather than to promote public interests. (People v. Ringe, 125 App. Div. 594.) (Second Dept., April, 1908.) (See Schnaive v. Navarre Hotel & Im. Co., 182 N. Y. 83.)

Section 2 of chapter 132, Laws of 1903, allowing a suit for injunction and damages against persons who use the portrait of authors for advertising or trade purposes without the written consent of the person represented is not unconstitutional. Said section is designed for the protection of individuals, and is not solely an exercise of the police power. (Wyatt v. McCrery & Co., 126 App. Div. 651.)

Section 66 of the sanitary code of the city of New York providing that "No milk shall be received, held, kept, offered for sale or delivered in the city of New York without a permit in writing from the Board of Health and subject to the conditions thereof" is a reasonable enactment, and does not violate either the federal or state constitutions. (People ex rel. Lieberman v. Vandecarr, 175 N. Y. 440.)

Protection of game, fish, etc., is within the police power of the legislature; and the method of protection is within the discretion of the legislature.

The legislature, in the exercise of its police power, may make the possession of imported game unlawful. (People v. Bootman, 180 N. Y. 1.)

The agricultural law in so far as it prohibits the sale of milk offered as pure milk, which does not conform to the prescribed standards, is constitutional. (People v. Bowen, 182 N. Y. 1.)

Chapter 803, Laws of 1896, requiring registration and certificate of competency of each master plumber in the city of New York, held unconstitutional. (Schnaire v. Navarre Hotel Imp. Co., 182 N. Y. 83, revg. 82 App. Div. 25.) (See also People v. Rienge, 125 App. Div. 594.)

Chapter 528, Laws of 1902, making the sale of merchandise in bulk fraudulent and void as against creditors of the seller, unless certain prescribed conditions are complied with

cannot be regarded as a valid exercise of the police power of the state. (Wright v. Hart, 182 N. Y. 330; revd. 103 App. Div. 218.)

Chapter 432, Laws of 1904, regulating the keeping of employment agencies in cities of the first and second class, having for its purpose the prevention of frauds and probably the suppression of immorality, is not in conflict with the constitutional right to carry on a lawful business without legislative interference. Such legislation which has for its object the promotion of public health, safety, morals, convenience and general welfare or the prevention of fraud or immorality is within the police power of the legislature and that body had the right to take notice of the fact that such agencies are places where ignorant people frequently resort to seek employment, affording great opportunities for fraud and oppression. (People ex rel. Armstrong v. Warden, etc., 183 N. Y. 223; affd., 107 App. Div. 617.)

The forest, fish and game law (chapter 20, Laws of 1900), as amended, prohibiting the possession of game coming from without the state during the close season is not unconstitutional, and is a valid exercise of the police power of the state. (People ex rel. Hill v. Hesterberg, 184 N. Y. 126; revd., 109 App. Div. 917, and Id. 295.)

Section 77 of labor law (chapter 184, Laws of 1903), in so far as it prohibits the employment of an adult female in a factory before six o'clock in the morning or after nine o'clock in the evening is unconstitutional, as it violates the constitutional provisions guaranteeing to every citizen the right to pursue any lawful employment in a lawful manner, and as it is discriminative against female citizens in denying to them equal rights with men with respect to liberty of person or of contract, it cannot be upheld as a proper exercise of the police power of the state. (People v. Williams, 189 N. Y. 131; affd., 116 App. Div. 379.)

Chapter 737, Laws of 1905, creating commission to fix the maximum price to be charged for service by gas and electric light corporations, is a proper exercise of the police power of the state, and is not violative of the provisions of the federal constitution guaranteeing to every state a republican

form of government. At the same time the said statute is violative of the fourteenth amendment of the federal constitution which guarantees "Equal protection of the laws" because it does not confer equal rights on both parties — the consumer of gas and electricity, and the corporations that provide the same. The statute, on its face, deprives one party of the right accorded to the other. (Village of Saratoga Springs v. Saratoga Gas, etc., Co., 191 N. Y. 123; revd., 122 App. Div. 203.)

Section 66 of the sanitary code of the city of New York, providing that milk sold in said city shall be subject to the conditions of the board of health, is not in violation of the constitution. (People ex rel. Lieberman v. Vandecarr, 175 N. Y. 440.) (1903.)

Section 210 of the public health law excluding children and persons not vaccinated from the public schools until vaccinated is a health law and a reasonable and proper exercise of the police power of the state. (Matter of Viemeister, 179 N. Y. 235.) (1904.)

In construing a penal statute the court will not go beyond the clear meaning and purpose or attempt to spell out a new offense not clearly indicated by the ordinary use of the words employed. (People v. Briggs, 193 N. Y. 457.) (1908.)

Section 97 of the insurance law limiting the compensation to be paid by insurance companies to its agents for new business is not retroactive. (Baswell v. Security Mut. L. Ins. Co., 193 N. Y. 465.) (1908.)

A municipal ordinance limiting the height of bill boards upon the roofs of private buildings is unauthorized. (People ex rel. Wineburg Co. v. Murphy, 195 N. Y. 126.) (1909.)

A statute (Penal Code, § 364, subd. 6) prohibiting the violation of trade marks constitutional. (The People v. Luhrs, 195 N. Y. 377.) (1909.)

Chapter 185, Laws of 1907, requiring persons and corporations receiving deposits and selling steamship tickets to foreign countries to execute a bond to the people of the state is a proper police regulation. (Musco v. United Surety Co., 196 N. Y. 459.) (1909.)

That portion of section 1, chapter 429, Laws of 1908, which prohibits accelerating by artificial contrivances the natural flow of water or gas from mineral springs is a valid exercise of the police power. (Hathorn v. Natural Carbonic Gas Co., 128 App. Div. 33.) (1908.)

The legislature has power to fix the time when liquor licenses shall expire in towns which under the local option laws have voted against the issuance of licenses. (People ex rel. McEachrow v. Bashfor, 128 App. Div. 351.) (1908.)

A city ordinance prohibiting the selling of peanuts from a vehicle unless drawn by a horse or horses is unconstitutional. (People v. Gilbert, 68 Misc. Rep. 48.) (1910.)

The ordinance of the city of Schenectady providing that any person found in a gambling house is subject to fine or imprisonment is void, as not being a proper exercise of the police power. (People v. Baum, 133 App. Div. 481.) (1909.)

Laws 1905, chapter 572, section 6a, requiring that persons engaged in the business of undertaking shall be licensed is unconstitutional. (The People v. Ringe, 197 N. Y. 143.) (1910.)

A statute (Penal Code, § 364, subd. 6) prohibiting the sale of medicines or poisons except in the presence or under the supervision of a licensed pharmacist is constitutional. (State Board of Pharmacy v. Mathews, 197 N. Y. 353.) (1910.)

Chapter 400, Laws of 1909, amending the charter of the city of New York requiring public dancing academies to be licensed is unconstitutional. (The People ex rel. Duryea v. Wilbur, 198 N. Y. 1.) (1910.)

Consolidated laws, chapter 31, section 8, making it unlawful for railroad employees in charge of block signal to be on duty more than eight hours in twenty-four constitutional. (People v. Erie R. Co., 198 N. Y. 369.) (1910.)

Chapter 344 of the Laws of 1907, which made it a misdemeanor to practice medicine without a license, is constitutional being a valid exercise of the police power. (People v. Mulford, 140 App. Div. 716.) (1910.)

While the sale of oleomargarine cannot be prohibited without an invasion of constitutional rights, a statute prohibiting the manufacture of oleomargarine so as to imitate dairy butter by the introduction of foreign substances is constitutional. (People v. Clark, 140 App. Div. 150.) (1910.)

The legislature may commit to police magistrates without a jury the trial of women accused of being common prostitutes and soliciting on public thoroughfares, such an act being a legitimate exercise of the police power in the interest of public health and morals. (People ex rel. St. Clair v. Davis, 143 App. Div. 579.) (1911.)

The provision in the Sanitary Code of New York city requiring death certificates to be signed by a doctor of medicine is in the interest of public health and a valid exercise of the police power and may not be attacked by a doctor of osteopathy. (Bandell v. City of New York, 69 Misc. Rep. 93.) (1910.)

A city ordinance prohibiting the sale on any street in the city of tickets to places of amusement, is a lawful exercise of the police power. (Lange v. Palmetter, 71 Misc. Rep. 158.) (1911.)

The provision of a city charter authorizing the fire commissioner to compel the installation of certain appliances for preventing and extinguishing fires is not unconstitutional. (Waldo v. Christman, 72 Misc. Rep. 349.) (1911.)

A law which provides that no person shall conduct a transient retail business in any store in any city of the third class, village or town of this state for the sale of goods which shall be represented or advertised as a bankrupt stock, or as assigned stock, or as goods damaged by fire, water or otherwise, or by any such like representation or device, without first taking out a license therefor, cannot be sustained as an exercise of either the police power or of the power of taxation, and, hence, is unconstitutional. (People ex rel. Moskowitz v. Jenkins, 102 N. Y. 53.) (1911.)

Number and terms of senators and assemblymen.— § 2. The Senate shall consist of fifty mem-

bers, except as hereinafter provided. The senators elected in the year one thousand eight hundred and ninety-five shall hold their offices for three years, and their successors shall be chosen for two years. The Assembly shall consist of one hundred and fifty members, who shall be chosen for one year.

[New, superseding section 2 of article III of the amended constitution of 1846, which provided for a senate of 32 members, and an assembly of 128 members. The provision that the senate shall consist of 50 members, "except as hereinafter provided," refers to the provision in the last paragraph of section 4 of this article.]

Senate districts.— § 3. The state shall be divided into fifty districts to be called senate districts, each of which shall choose one senator. The districts shall be numbered from one to fifty, inclusive.

District number one (1) shall consist of the counties of Suffolk and Richmond.

District number two (2) shall consist of the county of Queens.

District number three (3) shall consist of that part of the county of Kings comprising the first, second, third, fourth, fifth and sixth wards of the city of Brooklyn.

District number four (4) shall consist of that part of the county of Kings comprising the seventh, thirteenth, nineteenth and twenty-first wards of the city of Brooklyn.

District number five (5) shall consist of that part of the county of Kings comprising the eighth, tenth,

twelfth and thirtieth wards of the city of Brooklyn, and the ward of the city of Brooklyn which was formerly the town of Gravesend.

District number six (6) shall consist of that part of the county of Kings comprising the ninth, eleventh, twentieth and twenty-second wards of the city of Brooklyn.

District number seven (7) shall consist of that part of the county of Kings comprising the fourteenth, fifteenth, sixteenth and seventeenth wards of the city of Brooklyn.

District number eight (8) shall consist of that part of the county of Kings comprising the twenty-third, twenty-fourth, twenty-fifth and twenty-ninth wards of the city of Brooklyn, and the town of Flatlands.

District number nine (9) shall consist of that part of the county of Kings comprising the eighteenth, twenty-sixth, twenty-seventh and twenty-eighth wards of the city of Brooklyn.

District number ten (10) shall consist of that part of the county of New York within and bounded by a line beginning at Canal street and the Hudson river, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Canal street, the Bowery, Division street, Grand street, and Jackson street, to the East river and thence around the southern end of Manhattan island, to the place of beginning, and also Governor's, Bedloe's and Ellis islands.

District number eleven (11) shall consist of that

part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the junction of Broadway and Canal street, and running thence along Broadway, Fourth street, the Bowery and Third avenue, St. Mark's place, Avenue A, Seventh street, Avenue B, Clinton street, Rivington street, Norfolk street, Division street, Bowery and Canal street, to the place of beginning.

District number twelve (12) shall consist of that part of the county of New York lying north of districts numbers ten and eleven and within and bounded by a line beginning at Jackson street and the East river, and running thence through Jackson street, Grand street, Division street, Norfolk street, Rivington street, Clinton street, Avenue B, Seventh street, Avenue A, St. Mark's place, Third avenue, East Fourteenth street to the East river, and along the East river, to the place of beginning.

District number thirteen (13) shall consist of that part of the county of New York lying north of district number ten, and within and bounded by a line beginning at the Hudson river at the foot of Canal street, and running thence along Canal street, Hudson street, Dominick street, Varick street, Broome street, Sullivan street, Spring street, Broadway, Fourth street, the Bowery and Third avenue, Fourteenth street, Sixth avenue, West Fifteenth street, Seventh avenue, West Nineteenth street, Eighth avenue, West Twentieth street, and the Hudson river, to the place of beginning.

District number fourteen (14) shall consist of that part of the county of New York lying north of districts numbers twelve and thirteen, and within and bounded by a line beginning at East Fourteenth street and the East river, and running thence along East Fourteenth street, Irving place, East Nineteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Fifty-third street, Third avenue, East Fifty-second street, and the East river, to the place of beginning.

District number fifteen (15) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Fourteenth street and Sixth avenue, and running thence along Sixth avenue, West Fifteenth street, Seventh avenue, West Fortieth street, Eight avenue, and the transverse road across Central park at Ninety-seventh street, Fifth avenue, East Ninety-sixth street, Lexington avenue, East Twenty-third street, Third avenue, East Nineteenth street, Irving place and Fourteenth street, to the place of beginning.

District number sixteen (16) shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at Seventh avenue and West Nineteenth street, and running thence along West Nineteenth street, Eighth avenue, West Twentieth street, the Hudson river, West Forty-sixth street, Tenth avenue, West Forty-third street, Eighth avenue, West

Fortieth street, and Seventh avenue, to the place of beginning.

District number seventeen (17) shall consist of that part of the county of New York lying north of district number sixteen, and within and bounded by a line beginning at the junction of Eighth avenue and West Forty-third street, and running thence along West Forty-third street, Tenth avenue, West Forty-sixth street, the Hudson river, West Eighty-ninth street, Tenth or Amsterdam avenue, West Eighty-sixth street, Ninth or Columbus avenue, West Eighty-first street and Eighth avenue, to the place of beginning.

District number eighteen (18) shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at the junction of East Fifty-second street and the East river, and running thence along East Fifty-second street, Third avenue, East Fifty-third street, Lexington avenue, East Eighty-fourth street, Second avenue, East Eighty-third street and the East river, to the place of beginning; and also Blackwell's island.

District number nineteen (19) shall consist of that part of the county of New York lying north of district number seventeen, and within and bounded by a line beginning at West Eighty-ninth street and the Hudson river, and running thence along the Hudson river and Spuyten Duyvil creek around the northern end of Manhattan island; thence southerly along the Harlem river to the north end of Fifth avenue; thence

along Fifth avenue, East One Hundred and Twenty-ninth street, Fourth or Park avenue, East One Hundred and Tenth street, Fifth avenue, the transverse road across Central park at Ninety-seventh street, Eighth avenue, West Eighty-first street, Ninth or Columbus avenue, West Eighty-sixth street, Tenth or Amsterdam avenue and West Eighty-ninth street, to the place of beginning.

District number twenty (20) shall consist of that part of the county of New York lying north of districts numbers eighteen and fifteen, and within and bounded by a line beginning at East Eighty-third street and the East river, running thence through East Eighty-third street, Second avenue, East Eighty-fourth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Tenth street, Fourth or Park avenue, East One Hundred and Nineteenth street to the Harlem river, and along the Harlem and East rivers to the place of beginning; and also Randall's island and Ward's island.

All of the above districts in the county of New York bounded upon or along the boundary waters of the county, shall be deemed to extend to the county line.

District number twenty-one (21) shall consist of that part of the county of New York lying north of districts numbers nineteen and twenty, within and bounded by a line beginning at East One Hundred and Nineteenth street and the Harlem river, and running thence along East One Hundred and Nine-

teenth street, Fourth or Park avenue, One Hundred and Twenty-ninth street, Fifth avenue and the Harlem river to the place of beginning; and all that part of the county of New York not hereinbefore described.

District number twenty-two (22) shall consist of the county of Westchester.

The territory of Westchester county annexed to New York county remained a part of the twenty-second senate district, and of the second judicial district and department. (People ex rel. Henderson v. Supervisors of Westchester, 147 N. Y. 1.) (1895.)

District number twenty-three (23) shall consist of the counties of Orange and Rockland.

District number twenty-four (24) shall consist of the counties of Dutchess, Columbia and Putnam.

District number twenty-five (25) shall consist of the counties of Ulster and Greene.

District number twenty-six (26) shall consist of the counties of Delaware, Chenango and Sullivan.

District number twenty-seven (27) shall consist of the counties of Montgomery, Fulton, Hamilton and Schoharie.

District number twenty-eight (28) shall consist of the counties of Saratoga, Schenectady and Washington.

District number twenty-nine (29) shall consist of the county of Albany.

District number thirty (30) shall consist of the county of Rensselaer.

District number thirty-one (31) shall consist of the counties of Clinton, Essex and Warren.

District number thirty-two (32) shall consist of the counties of St. Lawrence and Franklin.

District number thirty-three (33) shall consist of the counties of Otsego and Herkimer.

District number thirty-four (34) shall consist of the county of Oneida.

District number thirty-five (35) shall consist of the counties of Jefferson and Lewis.

District number thirty-six (36) shall consist of the county of Onondaga.

District number thirty-seven (37) shall consist of the counties of Oswego and Madison.

District number thirty-eight (38) shall consist of the counties of Broome, Cortland and Tioga.

District number thirty-nine (39) shall consist of the counties of Cayuga and Seneca.

District number forty (40) shall consist of the counties of Chemung, Tompkins and Schuyler.

District number forty-one (41) shall consist of the counties of Steuben and Yates.

District number forty-two (42) shall consist of the counties of Ontario and Wayne.

District number forty-three (43) shall consist of that part of the county of Monroe comprising the towns of Brighton, Henrietta, Irondequoit, Mendon, Penfield, Perinton, Pittsford, Rush and Webster, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, fourteenth,

sixteenth, seventeenth and eighteenth wards of the city of Rochester, as at present constituted.

District number forty-four (44) shall consist of that part of the county of Monroe comprising the towns of Chili, Clarkson, Gates, Greece, Hamlin, Ogden, Parma, Riga, Sweden and Wheatland, and the first, second, third, fifth, ninth, tenth, eleventh, fifteenth, nineteenth and twentieth wards of the city of Rochester, as at present constituted.

District number forty-five (45) shall consist of the counties of Niagara, Genesee and Orleans.

District number forty-six (46) shall consist of the counties of Allegany, Livingston and Wyoming.

District number forty-seven (47) shall consist of that part of the county of Erie comprising the first, second, third, sixth, fifteenth, nineteenth, twentieth, twenty-first, twenty-second, twenty-third and twenty-fourth wards of the city of Buffalo, as at present constituted.

District number forty-eight (48) shall consist of that part of the county of Erie comprising the fourth, fifth, seventh, eighth, ninth, tenth, eleventh, twelfth, thirteenth, fourteenth and sixteenth wards of the city of Buffalo as at present constituted.

District number forty-nine (49) shall consist of that part of the county of Erie comprising the seventeenth, eighteenth and twenty-fifth wards of the city of Buffalo, as at present constituted; and all the remainder of the said county of Erie not hereinbefore described.

District number fifty (50) shall consist of the counties of Chautauqua and Cattaraugus.

[New, superseding the apportionment made by laws 1892, chap. 397.]

Enumerations and reapportionments.—§ 4. An enumeration of the inhabitants of the State shall be taken under the direction of the Secretary of State, during the months of May and June, in the year one thousand nine hundred and five, and in the same months every tenth year thereafter; and the said districts shall be so altered by the Legislature at the first regular session after the return of every enumeration, that each senate district shall contain as nearly as may be an equal number of inhabitants, excluding aliens, and be in as compact form as practicable, and shall remain unaltered until the return of another enumeration, and shall, at all times, consist of contiguous territory, and no county shall be divided in the formation of a senate district except to make two or more senate districts wholly in such county. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of senate districts; nor shall any district contain a greater excess in population over an adjoining district in the same county, than the population of a town or block therein adjoining such district. Counties, towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens.

No county shall have four or more senators unless it shall have a full ratio for each senator. No county shall have more than one-third of all the senators; and no two counties or the territory thereof as now organized, which are adjoining counties, or which are separated only by public waters, shall have more than one-half of all the senators.

The ratio for apportioning the senators shall always be obtained by dividing the number of inhabitants, excluding aliens, by fifty, and the senate shall always be composed of fifty members, except that if any county having three or more senators at the time of any apportionment shall be entitled on such ratio to an additional senator or senators, such additional senator or senators shall be given to such county in addition to the fifty senators, and the whole number of senators shall be increased to that extent.

[New, superseding section 4 of article III of the amended constitution of 1846.]

The legislature in determining the question of population is not confined to the last state census. (De Camp v. Eveland, 19 Barb. 81.)

This section grants to the legislature a discretion, which the court has no power to review unless it has been plainly and grossly abused. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

The power of the legislature to direct an enumeration is not lost by the failure of the first legislature after the expiration of ten years to perform its duty. The duty devolves upon each succeeding legislature. (People v. Rumsey, 19 N. Y. 41; People ex rel. Carter v. Rice, 135 id. 473.)

The violation of the constitutional provisions in the formation of certain senatorial districts renders Ch. 431, L. 1906, wholly unconstitutional. See Matter of Sherrill v. O'Brien. 188 N. Y. 185–234.

An apportionment bill passed by the legislature at an extraordinary session is not a violation of this section, the word "regular" being, not a qualification as to the character of the session at which an apportionment bill can be enacted, but merely part of the definition of the time or period at which the duty is imposed on the legislature to make a new apportionment. (Matter of Reynolds, 202 N. Y. 430.) (1911.)

Apportionment of assemblymen; creation of assembly districts.—§ 5. The members of the Assembly shall be chosen by single districts and shall be apportioned by the Legislature at the first regular session after the return of every enumeration among the several counties of the State, as nearly as may be according to the number of their respective inhabitants, excluding aliens. Every county heretofore established and separately organized, except the county of Hamilton, shall always be entitled to one member of Assembly, and no county shall hereafter be erected unless its population shall entitle it to a member. The county of Hamilton shall elect with the county of Fulton, until the population of the county of Hamilton shall, according to the ratio, entitle it to a member. But the Legislature may abolish the said county of Hamilton and annex the territory thereof to some other county or counties.

The quotient obtained by dividing the whole number of inhabitants of the State, excluding aliens, by the number of members of assembly, shall be the ratio for apportionment, which shall be made as follows: One member of assembly shall be apportioned to every county, including Fulton and Hamilton as one county, containing less than the ratio and one-half over. Two members shall be apportioned to every other county. The remaining members of assembly shall be apportioned to the counties having more than two ratios according to the number of inhabitants, excluding aliens. Members apportioned on remainders shall be apportioned to the counties having the highest remainders in the order thereof respectively. No county shall have more

members of assembly than a county having a greater number of inhabitants, excluding aliens.

Until after the next enumeration, members of the Assembly shall be apportioned to the several counties as follows: Albany county, four members; Allegany county, one member; Broome county, two members; Cattaraugus county, two members; Cayuga county, two members; Chautauqua county, two members; Chemung county, one member; Chenango county, one member; Clinton county, one member; Columbia county, one member; Cortland county, one member; Delaware county, one member; Dutchess county, two members; Erie county, eight members; Essex county, one member; Franklin county, one member; Fulton and Hamilton counties, one member; Genesee county, one member; Greene county, one member; Herkimer county, one member; Jefferson county, two members; Kings county, twenty-one members; Lewis county, one member; Livingston county, one member; Madison county, one member; Monroe county, four members; Montgomery county, one member; New York county, thirty-five members; Niagara county, two members; Oneida county, three members; Onondaga county, four members; Ontario county, one member; Orange county, two members; Orleans county, one member; Oswego county, two members; Otsego county, one member; Putnam county, one member; Queens county, three members; Rensselaer county, three members; Richmond county, one member; Rockland county, one member; St. Lawrence county,

two members; Saratoga county, one member; Schenectady county, one member; Schoharie county, one member; Schuyler county, one member; Seneca county, one member; Steuben county, two members; Suffolk county, two members; Sullivan county, one member; Tioga county, one member; Tompkins county, one member; Ulster county, two members; Warren county, one member; Washington county, one member; Wayne county, one member; Westchester county, three members; Wyoming county, one member, and Yates county, one member.

In any county entitled to more than one member, the board of supervisors, and in any city embracing an entire county and having no board of supervisors, the common council, or if there be none, the body exercising the powers of a common council, shall assemble on the second Tuesday of June, one thousand eight hundred and ninety-five, and at such times as the Legislature making an apportionment shall prescribe, and divide such counties into assembly districts as nearly equal in number of inhabitants, excluding aliens, as may be of convenient and contiguous territory in as compact form as practicable, each of which shall be wholly within a senate district formed under the same apportionment, equal to the number of members of assembly to which such county shall be entitled, and shall cause to be filed in the office of the Secretary of State and of the clerk of such county, a description of such districts, specifying the number of each district and of the in-

habitants thereof, excluding aliens, according to the last preceding enumeration; and such apportionment and districts shall remain unaltered until another enumeration shall be made, as herein provided; but said division of the city of Brooklyn and the county of Kings to be made on the second Tuesday of June, one thousand eight hundred and ninety-five, shall be made by the common council of the said city and the board of supervisors of said county, assembled in joint session. In counties having more than one senate district, the same number of assembly districts shall be put in each senate district, unless the assembly districts cannot be evenly divided among the senate districts of any county, in which case one more assembly district shall be put in the senate district in such county having the largest, or one less assembly district shall be put in the senate district in such county having the smallest number of inhabitants, excluding aliens, as the case may require. No town, and no block in a city inclosed by streets or public ways, shall be divided in the formation of assembly districts, nor shall any districts contain a greater excess in population over an adjoining district in the same senate district, than the population of a town or block therein adjoining such assembly district. Towns or blocks which, from their location, may be included in either of two districts, shall be so placed as to make said districts most nearly equal in number of inhabitants, excluding aliens; but in the division of cities under the first apportionment, regard shall be had to the number of inhabitants, excluding

aliens, of the election districts according to the state enumeration of one thousand eight hundred and ninety-two, so far as may be, instead of blocks. Nothing in this section shall prevent the division, at any time, of counties and towns, and the erection of new towns by the Legislature.

An apportionment by the Legislature, or other body, shall be subject to review by the Supreme Court, at the suit of any citizen, under such reasonable regulations as the Legislature may prescribe; and any court before which a cause may be pending involving an apportionment, shall give precedence thereto over all other causes and proceedings, and if said court be not in session it shall convene promptly for the disposition of the same.

[New, superseding section 5 of article III of the amended constitution of 1846, and the assembly apportionment made by Laws of 1892, chapter 397.]

The legislature cannot alter an assembly district by changing the bounds of a city or town. (Kinne v. City of Syracuse, 3 Keyes, 110.)

The division by the supervisors is presumptively proper, and the presumption is not rebutted by the fact that the districts are to some extent unequal in population. (Baird v. Supervisors, 138 N. Y. 95, 106.)

Under this section boards of supervisors are permitted to exercise a reasonable discretion in the creation of the assembly districts. (Smith v. Supervisors of St. Lawrence, 148 N. Y. 187.) (1896.)

The apportionment act of 1907, chapter 727, is constitutional. (People v. Coney Island Jockey Club, 68 Misc. 302.) (1910.)

Mandamus will lie to compel a board of supervisors of a county to reconvene for the purpose of making a lawful and proper apportionment of the county into assembly districts. (Matter of Timmerman, 51 Misc. Rep. 192.) (1906.)

Compensation of members.— § 6. Each member of the Legislature shall receive for his services an annual salary of one thousand five hundred dollars. The members of either house shall also receive the sum of one dollar for every ten miles they shall travel in going to and returning from their place of meeting, once in each session, on the most usual route, Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the Court for the Trial of Impeachments, and such members of the Assembly, not exceeding nine members, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

[Section 6 of article III of the amended constitution of 1846, without change.]

(See Legislative Law, § 5, restricting members from receiving $1,200 before final adjournment. For salaries of officers and employees see Legislative Law, §§ 7-12.)

Civil appointments of members void.— § 7. No member of the Legislature shall receive any civil appointment within this State, or the Senate of the United States, from the Governor, the Governor and Senate, or from the Legislature, or from any city government, during the time for which he shall have been elected; and all such appointments and all votes given for any such member for any such office or appointment shall be void.

[Section 7 of article III of the amended constitution of 1846, without change.]

An appointment of a member of assembly as clerk by a justice of a district court is not violative of this section.

(Stewart v. Mayor, 15 App. Div. 548.) (1897.) A district court is not a city court. (Id.)

Persons disqualified from being members.—§ 8. No person shall be eligible to the Legislature, who at the time of his election, is, or within one hundred days previous thereto has been, a member of Congress, a civil or military officer under the United States, or an officer under any city government. And if any person shall, after his election as a member of the Legislature, be elected to Congress, or appointed to any office, civil or military, under the government of the United States, or under any city government, his acceptance thereof **shall vacate his seat.**

[Section 8 of article III of the amended constitution of 1846, without change.]

A park commissioner of the city of Hornellsville is a city officer under this section and ineligible to election to the legislature. The whole subject thoroughly discussed. (People ex rel. Sherwood v. Bd. of Canvassers, 129 N. Y. 360, 365.)

Time of elections.—§ 9. The elections of senators and members of assembly, pursuant to the provisions of this Constitution, shall be held on the Tuesday succeeding the first Monday of November, unless otherwise directed by the Legislature.

[Section 9 of article III of the amended constitution of 1846, without change.]

Powers of each house.—§ 10. A majority of each house shall constitute a quorum to do business. Each house shall determine the rules of its own proceedings, and be the judge of the elections, returns and qualifications of its own members; shall choose its own officers; and the Senate shall choose a temporary president to preside in case of the absence or impeachment of the Lieutenant-Governor, or when he shall refuse to act as president, or shall act as Governor.

[Section 10 of article III of the amended constitution of 1846, amended by providing that the temporary president shall preside in the case of impeachment of the lieutenant-governor or when he shall refuse to act.]

Infliction by law of disqualification to hold office as a punishment is not inconsistent with this section. (Barker v. People, 3 Cow. 686. See also People v. Supervisors, 8 N. Y. 317, 324; People ex rel. Hatzel v. Hall, 80 id. 117, 120.)

Journals; open sessions; adjournments.—§ 11. Each house shall keep a journal of its proceedings, and publish the same, except such parts as may require secrecy. The doors of each house shall be kept open, except when the public welfare shall require secrecy. Neither house shall, without the consent of the other, adjourn for more than two days.

[Section 11 of article III of the amended constitution of 1846, without change.]

Members not to be questioned for speeches.—§ 12. For any speech or debate in either house of the Legislature, the members shall not be questioned in any other place.

[Section 12 of article III of the amended constitution of 1846, without change.]

Bill may originate in either house.— § 13. Any bill may originate in either house of the Legislature, and all bills passed by one house may be amended by the other.

[Section 13 of article III of the amended constitution of 1846, without change.]

Enacting clause of bills.— § 14. The enacting clause of all bills shall be "The People of the State of New York, represented in Senate and Assembly, do enact as follows," and no law shall be enacted except by bill.

[Section 14 of article III of the amended constitution of 1846, without change.]

(See Burnham v. Acton, 35 How. Pr. 50.)

Manner of passing bills.—§ 15. No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal.

[Section 15 of article III of the amended constitution of 1846 amended. The section formerly read: "No bill shall

be passed unless by the assent of a majority of all the members elected to each branch of the legislature, and the question upon the final passage shall be taken immediately upon its last reading, and the yeas and nays entered on the journal."]

For law relating to certificates of presiding officers, see Legislative Law, § 40.

The presumption is that a law published under the authority of the government was correctly passed so far as relates to matters of form. (People v. Supervisors of Chenango, 8 N. Y. 317.)

It is not necessary under the constitution that the presiding officer should certify that an act was passed by a majority of all the members elected. This is presumed. (Id.)

It is sufficient where a bill has been passed by ayes and nays, and subsequent amendments disagreed to by the other house, if such amendments are receded from without an aye and nay vote. (Id.)

The requirement that the question upon the final passage of a bill be taken immediately upon its last reading, and the ayes and nays be entered in the journal, is only directory. (People v. Supervisors of Orange, 27 Barb. 584.)

The certificate of the presiding officer of each house required by Laws 1847, chapter 253, is only presumptive evidence of the fact. If the certificate is omitted, the fact that three-fifths were present may be shown by other evidence. (People v. Supervisors of Chenango, 8 N. Y. 318.)

The stock transfer act (chapter 241, Laws of 1905), alleged to be unconstitutional because passed without an emergency message before it had been on the desks of the members of the legislature in its final form for at least three calendar legislative days prior to its final passage, as required by section 15 of article 3 of the constitution, is not invalid for that reason, when it appears that the bill originated in the senate, lay on the desks of its members for three calendar legislative days in its final printed form, and also in accordance with legislative practice, upon the desks of the members of the assembly during the same period and in the same form, was passed by the senate, and the second day thereafter by the assembly.

The word "members" as used in the constitutional provision means members of the legislature as an entirety, not members of the senate and assembly merely as such. * * * The constitutional requirements are met when a bill has been upon the desks of the members of each house, in its final form, for at least three calendar legislative days, whether simultaneously or otherwise. (People ex rel. Hatch v. Reardon, 184 N. Y. 431.) (1906.) (110 App. Div. 821, affd.)

Private and local bills not to embrace more than one subject.—§ 16. No private or local bill, which may be passed by the Legislature, shall embrace more than one subject, and that shall be expressed in the title.

[Section 16 of article III of the amended constitution of 1846, without change.]

This section is limited to acts of the legislature and does not apply to a resolution of a board of supervisors. (Roberts v. Supervisors of Kings, 3 App. Div. 366.) (1896.)

The design of this section was that no portion of the state or its people should be made the subject of legislative action without notice. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 15; People v. Hills, 35 id. 449.)

The intention was to require sufficient notice of the subject of proposed legislation of a private or local character to be so expressed in the title as to put all persons concerned in proposed legislation upon their guard. (Johnston v. Spicer, 107 N. Y. 185; Astor v. Arcade R. R. Co., 113 id. 93.)

The inquiry must be based upon the title of the original act. (Wilcox v. Baker, 22 App. Div. 299.) (1897.)

It is not sufficient to state in the title of a local bill merely that it amends a chapter of a previous year (People v. Hills, 35 N. Y. 449); but it is not necessary that the most expressive title should be adopted, nor should the courts criticise too rigidly the details of a bill to find extraneous matter (People ex rel. Rochester v. Briggs, 50 N. Y. 558); "An act to amend the several acts in relation to the city of Rochester," was held sufficient. (Id.)

It is necessary that the title be such as to fairly suggest or give a clue to the subject, but when that is expressed, all matters fairly and reasonably connected with it, and all measures which will or may facilitate its accomplishment, are proper to be incorporated in the act. (Astor v. Arcade R. R. Co., 113 N. Y. 93, 110; Sweet v. City of Syracuse, 129 id. 316, 331; Van Brunt v. Town of Flatbush, 128 id. 50.)

Any means provided by an act for accomplishing the purpose as expressed in the title, not clearly incongruous and

foreign, will not render it invalid. (People ex rel., etc. v. Briggs, 50 N. Y. 553; Kerrigan v. Force, 68 N. Y. 384.)

A statute, general in form, is not private or local, because every application must be local or private. (Matter of N. Y. El. R. R. Co., 70 N. Y. 327; Matter of Gilbert El. R. R. Co., id. 361.)

The legislature may make local exceptions in general laws. (Matter of N. Y. El. R. R. Co., 70 N. Y. 327.)

A statute, local in one sense, may in some cases be general. (Burnham v. Acton, 7 Rob. 95.)

No definite rule can be laid down as to what constitutes a local act, but each case must be determined upon its own circumstances. (People ex rel. v. Newburgh Plankroad Co., 86 N. Y. 1, 7.)

A general provision in a local act is valid, although not expressed in the title, and though the local provisions are void because not expressed in the title. (Ferguson v. Ross, 126 N. Y. 459; People v. Supervisors of Chautauqua, 43 id. 10; People v. McCann, 16 id. 58; Williams v. People, 24 id. 405.) The local provisions are void, if by containing general law, the act embraces more than one subject though but one local or private subject. (People v. Supervisors of Chautauqua, 43 N. Y. 10, 23.)

An act embracing all the cities of the state, or all things of a certain class is general, although by some limitation of population or otherwise, only a particular city or the inhabitants of a single locality receive its benefit. (Ferguson v. Ross, 126 N. Y. 459, 464; People ex rel. v. Squire, 107 id. 593; Matter of Church, 92 id. 4; Matter of Elevated R. R., 70 id. 327; Treanor v. Eichhorn, 74 Hun, 58; Burnham v. Acton, 7 Rob. 95.)

An act is local which in its subjects relates but to a portion of the people of the state, or to their property, and may not either in its subject, operation or immediate and necessary results, affect the people of the state or their property in general. (People v. Supervisors, 43 N. Y. 21; Kerrigan v. Force, 68 id. 383.)

Although an act is drawn in general terms, if its provisions are such in number and character, as unduly, with reference to the constitutional purpose, to restrict its operation and, to all intents, to confine it to a particular locality, it comes as much under condemnation as though it desig-

nated the locality by name. (Matter of Henneberger, 155 N. Y. 420.) (1898.)

An act may be public and still local. Thus the following acts though public are local and require the subject to be expressed in the title: Defining jurisdiction of local courts, amending municipal charters, regulating elections of city officers in a particular city, providing for laying out streets or highways or constructing bridges in a particular locality, taxing to pay expenses of the work, regulating fees of officers in a particular county or the expenses of judicial sales therein. (Ferguson v. Ross, 126 N. Y. 459, 464, and cases cited.)

The following have been held to be local acts:

An act creating a water department in and for the city of Syracuse. (Sweet v. City of Syracuse, 129 N. Y. 316.)

Act exempting counties from the provisions of the plank-road company act. (People v. Newburgh Plankroad Co., 86 N. Y. 1.)

An act providing for the taxation of the Troy Union Railroad Company. (People ex rel. Troy Co. v. Carter, 52 Hun, 458; affd., 117 N. Y. 625.)

An act relating to powers of board of supervisors of Queens county. (People v. Brinkerhoff, 68 N. Y. 259.)

An act authorizing the city of Rochester to elect directors of Genesee Valley railroad. (People v. Hills, 35 N. Y. 449.)

An act relating to fees of sheriff in county of New York. (Gaskin v. Meek, 42 N. Y. 186.)

An act to affirm, reduce and levy certain assessments of the city of Brooklyn. (Matter of Van Antwerp, 56 N. Y. 261.)

An act in relation to the laying out and paving of certain streets in the city of New York. (Matter of Lexington Avenue, 29 Hun, 303; Matter of Woolsey, 95 N. Y. 135.)

See also other cases cited under this section and section 18 of this article.

The following have been held to be general bills:

An act appropriating money for bridging Seneca river to facilitate passage of canal-boats. (Waterloo Woolen Mfg. Co. v. Shanahan, 128 N. Y. 345.)

A law having for its object the protection of navigation in New York harbor. (Ferguson v. Ross, 126 N. Y. 459.)

An act providing for a board of electrical subway com-

missioners in cities having a population of over 500,000. (People v. Squires, 107 N. Y. 593.)

An act conferring additional powers on board of supervisors. (Philips v. Schumacher, 10 Hun, 405.)

An act to provide for the construction of highways and bridges upon highways running through two or more towns. (Treanor v. Eichhorn, 74 Hun, 58.)

Workingmen's union label act. (Perkins v. Heert, 158 N. Y. 306.)

An act providing for special jury in counties containing certain population. (People v. Dunn, 157 N. Y. 528.)

An act appointing transfer tax appraisers in certain counties of the state. (Matter of Wallace, 71 App. Div. 284.)

An act appointing a commissioner of jurors in each county of the state having a certain population. (Matter of Allison, 172 N. Y. 421.)

Employers' liability act. (Gmaehle v. Rosenberg, 83 App. Div. 339.)

The application of this section has been passed upon in the following cases:

"An act to establish a local court of civil jurisdiction in the city of Syracuse, to be called the municipal court of the city of Syracuse," held sufficient. The abolition of office of justice of the peace and of the justice's court was so connected with and pertinent to the whole scheme as not to constitute another and different subject. (Curtin v. Barton, 139 N. Y. 505.)

"An act in relation to local improvements in the town of Flatbush and the acquisition of the rights of the plank-road company in said town," properly embraces the building and improvement of highways and construction of sewers, including a trunk sewer in an adjoining town which is a necessary part of the system. (Van Brunt v. Flatbush, 128 N. Y. 50.)

"An act to legalize the acts and proceedings of the town board of the town of Attica, in relation to the erection of a certain iron bridge in said town," is sufficient to include provision permitting the contractor to recover for value of material and labor expended in construction of bridge. (Wrought Iron Bridge Co. v. Attica, 119 N. Y. 204.)

"An act to provide for the transmission of letters, packages and merchandise in New York and Brooklyn by means of pneumatic tubes," will permit provision for creation of corporation for purpose of constructing, maintaining, using and operating the pneumatic tubes. (Astor v. Arcade R. R. Co., 113 N. Y. 93.)

But a title providing for the transportation of passengers and property through pneumatic tubes will not permit of a provision authorizing the operation of an underground railway. (Id.)

"An act to establish and maintain a water department in and for the city of Syracuse" is sufficient to permit the incorporation of every provision necessary for the organization of such a department as an official body and also provisions conferring power upon that body to supply the city and the inhabitants with water. (Sweet v. Syracuse, 129 N. Y. 331.)

A title providing for the legalizing of the acts of the captain of the port and harbor-masters, and conferring jurisdiction on the board of claims to hear and determine their claims and declaring from what date their offices should be deemed vacant, includes subjects sufficiently connected to authorize their being embraced in one act, as they all relate to the same subject-matter and are not violative of this section. (Cole v. State, 102 N. Y. 48.)

An act entitled "An act for the relief of the village of Clinton" does not embrace more than one subject, because containing provisions legalizing acts of water commissioners, also legalizing special election and curing errors and omissions in previous legislation, all of which is sufficiently expressed in title. (Water Commissioners v. Dwight, 101 N. Y. 9-11.)

"An act in reference to the collection of taxes in the counties of Chautauqua and Cattaraugus" will permit of provisions making deeds of county officers presumptive and conclusive evidence of regularity. (Ensign v. Barse, 107 N. Y. 329.)

"An act granting to the United States the right to acquire the right of way necessary for the improvement of the Harlem river and Spuyten Duyvil creek, and ceding jurisdiction over the same," sufficiently expresses the subject of

acquisition of lands by purchase or compulsory proceedings, the manner of payment and the mode of acquiring means therefor. (Matter of United States, 96 N. Y. 227.)

"An act in relation to the county treasurers of the counties of Monroe and Seneca," permits of provisions authorizing supervisors to designate banks of deposit, requiring such banks to give bonds, pay interest and keep accounts with state treasurer. (Supervisors of Seneca v. Allen, 99 N. Y. 532.)

"An act to revise the charter of Long Island City," expresses but one subject. An act creating a municipality and giving to it the necessary legislative, taxing, judicial and police powers, embraces but one subject and the revision of an act which incorporated a municipality is by parity of reasoning but one subject and certainly so if in the revision no different general powers are given. (Harris v. People, 59 N. Y. 599.)

"An act to secure better administration in the police courts of the city of New York," will permit of the incorporation of every provision of law which legislative wisdom may regard as conducive to the securing of better administration in these courts. (Wenzler v. People, 58 N. Y. 516.)

"An act relative to contracts, etc., of the city of New York" will permit of a provision devolving the power and authority theretofore vested in the common council relative to assessment lists and the confirmation thereof upon other city officers as it relates to the manner of raising money by assessment to pay for the execution of contracts. (Matter of Volkening, 52 N. Y. 650.)

"An act in relation to that portion of the Great Western Turnpike road known as Western avenue," etc., will permit of provisions relating to conveyances by the turnpike company, acceptance of the same by the grantees and all improvements, ornamentation and repair of the highway mentioned. The subject-matter of the act was the turnpike road. The title need not disclose the character of the proposed legislation, its full object and purpose or make known the several interests which may be affected by it. The legislature is not subject to judicial control in respect to the form or mode in which the subject of the bill shall be expressed provided it is expressed. (People v. Banks, 67 N. Y. 568.)

"An act to reorganize the village of Gloversville" will permit of provisions relating to granting licenses and suing for penalties, as they relate to the subject of police regulations which are embraced in the organization of the village. (Gloversville v. Howell, 70 N. Y. 287.)

"An act to amend the several acts in relation to the city of Rochester." The subject-matter is the corporate powers of the city and their regulation. The title expresses the subject comprehensively enough to embrace all the details of a city charter. Inasmuch as the subject comprehends all of the functions of the corporation, provisions in relation to any of them or necessary or pertinent to accomplish and carry out any of them may be incorporated in the bill. (People v. Briggs, 50 N. Y. 553.)

"An act to enable the board of supervisors of the county of New York to raise money by taxes and in relation to the expenditure thereof, and to provide for auditing and payment of claims and in relation to actions against said city," will not permit of a provision in relation to the term of office and time of electing councilmen of said corporation. (People v. O'Brien, 38 N. Y. 193.)

An act entitled "An act to amend chapter 389 of the Laws of 1851," which authorizes the election of seven directors of the Rochester and Genesee Valley Railroad Company, instead of four, held unconstitutional as not expressing the subject of amendment in the title. (People v. Hills, 35 N. Y. 449.)

An act entitled "An act in relation to the fees of the sheriff of the city and county of New York and to the fees of referees in sales in partition cases," and which contains provisions relating to fees of sheriff, fees of referees and commitments of police justices and giving sheriff exclusive right to sell real estate, held to express more than one subject in title and to contain subjects not expressed in title. (Gaskin v. Meek, 42 N. Y. 186.)

An act entitled "An act to release the interest of the people of the state of New York in certain real estate to Catherine McCabe," the object of which was to convey to some one of the heirs of George Spicer the rights of property acquired by the state through escheat or forfeiture in the real and personal property of Ellen Spicer, held unconstitutional, that this is a private act and no reference is

made in the title to the former ownership of either George or Ellen Spicer or to the fact that the state acquired its interest by escheat or reversion, nor that the act was intended to transfer any interest in personal property, and no reference to the place or location of the property affected. (McCabe v. Kenny, 52 Hun, 514.)

An act entitled "An act to amend and consolidate the charter of the village of Waterloo," contains a sufficient expression in the title of the subject of the act which was the boundary of the village, wards and highways and election and appointment of officers. (Reed v. Schmit, 39 Hun, 223.)

An act entitled "An act to provide for the election of the surrogate separate from the county judge of the county of Steuben and to fix the salary of such surrogate and of county judge," which contains provisions relating to election, to term of office, to duties of surrogate and salary of county judge and surrogate, contains but one subject which is sufficiently expressed in title. (McIntyre v. Allen, 43 Hun, 124.)

An act entitled "An act to enforce the collection of taxes levied in the county of Lewis," imposing penalty for the cutting of timber upon lands upon which taxes remain unpaid, sufficiently expresses subject in title. (Prer tice v. Weston, 47 Hun, 121; affd., 111 N. Y. 460.)

An act to require the Eighth Avenue Railroad Company to extend its route and to regulate the use and operation of its railroad contains but one subject which is expressed in title. (Potter v. Collis, 19 App. Div. 392.) (1897.)

An act in relation to the office of district attorney of the county of Kings, which repeals an act creating the office of county detective and attaches that office to the district attorney's office, contains but one subject which is expressed in title. (People v. Backus, 11 App. Div. 147.) (1896.)

An act amending the county law relating to authorizing towns to borrow money and containing a special provision affecting Queens county contains but one subject which is expressed in the title. (Dunton v. Hume, 15 App. Div. 122.) (1897.)

An act entitled "An act to authorize the dredging of marsh lands," which created a corporation and authorized

it to reclaim lands, to levy and collect assessments and to exercise the power of eminent domain does not express the subject in the title. (Coxe v. State, 144 N. Y. 336.) (1895.)

An act providing for ascertaining and paying the amount of damages suffered by means of change of grade of streets in certain wards in the city of New York or otherwise, held to express but one subject in title. (People ex rel. Purdy v. Fitch, 147 N. Y. 355.) (1895.)

An act entitled "An act in relation to the office of sheriff of the city and county of New York," fairly embraces within its subject and title all matters legitimately and naturally connected with the administration of that office in its entirety and the powers, duties and emoluments of its administrators. (Mayor v. Gorman, 26 App. Div. 191.) (1898.)

An act providing for special juries in criminal cases in counties of 500,000 inhabitants is a general and not a local law, although by reason of the limitation based on population only a limited number of counties may receive its benefit. (People v. Dunn, 157 N. Y. 528.)

"An act establishing a board of improvement and defining its powers and duties and to provide for lighting the streets and other places in the town of New Utrecht" will not permit of a provision ratifying and confirming illegal contracts made for the purpose of lighting said town as this is a separate and distinct subject not included in the title. The establishing of the board of improvement for the town and defining its powers and duties has reference to the lighting of the streets and is one subject; that of ratifying and confirming illegal contracts is another subject and both cannot be included in the same act. (Parfitt v. Furguson, 159 N. Y. 111.) (1899.)

"An act to amend chapter 361 of the Laws of 1863, entitled an act to authorize the construction of a railway and tracks in the towns of West Farms and Morrisania, and the acts amendatory thereof," purports to effect a single object, namely, the amendment of a particular statute and necessarily calls attention to the fact that the purpose is to add to not deduct from the authority granted by it. Because it authorizes something not permitted by the original act it does not necessarily add to the number of subjects embraced in the legislation. Anything germane to the general

subject of building and operating a railroad might have been included in the original act and that which might have been included in the original act may be incorporated into it subsequently by amendment without a change of title. (Bohmer v. Haffen, 161 N. Y. 390.) (1900.)

A private and local statute entitled an act to authorize a railroad company to extend its road is not open to the objection that it contains more than one subject because of a provision fixing the maximum rate of fare which it may charge. (Parker v. E. C. & N. R. R. Co., 165 N. Y. 274.) (1901.)

An act entitled "An act for the better administration of justice in the town of Sweden in the county of Monroe," containing a provision abolishing the office of police justice of the village of Brockport and establishing the office of police justice in the town of Sweden, does not contain two subjects. (People v. Lane, 53 App. Div. 531.) (1900.)

"An act in relation to the village of Brockport" sufficient to describe a statute of several sections all relating to said village. (People ex rel. Village of Brockport v. Sutphin, 53 App. Div. 613.) (1900.) (Affd., 166 N. Y. 163.)

The title "An act in relation to Clinton Ave.," etc., sufficiently expresses the subject of the bill to widen the avenue by adding ornamental court yards on each side of it and regulate their use. The purpose contemplated is a public purpose. (Matter of City of New York, 57 App. Div. 166.) (Affd., 167 N. Y. 624.)

"An act to reorganize the police department of the city of New York," abolishing terms of office of police commissioners, providing for single commissioner and defining his powers and duties, abolishing office of chief of police and bureau of elections contains but one subject and that expressed in title. (People ex rel. Devery v. Coler, 71 App. Div. 584.) (Affd., 173 N. Y. 103.) (1903.)

Article 10 of tax law providing for appointment by comptroller of transfer tax appraisers in certain counties is not a local act. (Matter of Wallace, 71 App. Div. 284.) (1902.)

An act amending "An act to revise the charter of the city of Auburn," to change the time for holding charter election and to provide for the tenure of office of the officers of said city, embraces but one subject in the title which was the

amendment of the charter of the city of Auburn, what followed was merely explanatory and was not contradictory or misleading. (People ex rel. Stupp v. Kemp, 83 App. Div. 554.) (1903.)

An act entitled "An act for the relief of the heirs-at-law of William C. Herring, deceased," having for its purpose the release of title to lands devised to Honora V. Herring which had escheated to the state upon her death being a private and local bill and not containing in the title the name of the person whose decease affected the forfeiture nor the location of property was clearly misleading, did not express the subject of the act and was held unconstitutional. (Kelly v. Pratt, 41 Misc. Rep. 31.) (1903.)

An act entitled "An act to amend 'An act in relation to the management of the Albany penitentiary,' relative to the salary of the keeper of said penitentiary," which contained provisions authorizing commissioners to fix the salary of the superintendent; to dispense with his services; place the penitentiary in the custody of the sheriff; that the sheriff should serve without extra compensation; defining the sheriff's duties relative thereto; authorizing the discontinuance of the penitentiary or sale of the same, embraces several subjects only one of which is expressed in the title and is unconstitutional. (People ex rel. Corscadden v. Howe, 177 N. Y. 499.) (1903.)

An act entitled "An act to amend the charter of the city of Rochester, relative to expenses incident to improvements," and which contains provisions legalizing every general tax or local assessment on property in that city is unconstitutional as that subject is not expressed in the title. (Matter of City of Rochester v. Bloss, 77 App. Div. 28.) (1902.)

An act entitled "An act conferring additional powers upon town board of town of Jamaica, relative to public lands," which ratifies and confirms certain leases held unconstitutional as it does not sufficiently express that subject in title. (Wenk v. City of New York, 82 App. Div. 584.) (1903.)

Chapter 476, Laws of 1905, entitled "An act to authorize the city of Elmira to issue its bonds for the construction and repairing of an existing bridge across the Chemung river in the city of Elmira," is not in violation of section

16, article 3, in embracing more than one subject, although it authorizes the issue of bonds for such purpose. In order to be constitutional it is not necessary that the title of a bill shall be the best that could be selected, nor is it necessary to set forth in the title the various details of the object or purposes to be accomplished by the bill; it is sufficient if the title properly expresses the general purposes of the bill so as to apprise the public of the interests affected thereby. (City of Elmira v. Seymour, 111 App. Div. 199.) (1906.)

Chapter 629, Laws of 1904, all of whose provisions relate to the city of Troy, and were intended to amend its charter in several respects, does not sufficiently express in its title a purpose to change the personnel of the municipal improvements commission by adding members thereto, and for that reason is violative of section 16, article 3 of the constitution, providing that a local bill shall not embrace more than one subject and that shall be expressed in the title. (Cahill v. Hogan, 180 N. Y. 304; 99 App. Div. 619, 620.)

Chapter 151, Laws of 1892, ratifying a certain contract entered into by and between the city of Buffalo and the Buffalo Railway Company and others, does not violate the prohibition of section 16 of article 3 of the constitution. (Smith v. City of Buffalo, 51 Misc. Rep. 244.) (1906.)

Chapter 459, Laws of 1893, entitled "An act to incorporate the Economic Power and Construction Company" is unconstitutional as embracing more than one subject not expressed in its title. (Economic P. & C. Co. v. City of Buffalo, 195 N. Y. 286.) (1909.)

The public service commission law (chap. 429, L. 1907), does not offend this section of the constitution. (Gubner v. McLellan, 130 App. Div. 716.) (1909.)

A law providing for interest on awards for damages sustained by reason of change of grade of a street or highway in the state is a general and not a local law. (People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188.) (1911.)

Existing law made applicable to be inserted.—§ 17. No act shall be passed which shall provide that any existing law, or any part thereof, shall be made or deemed a part of said act, or which shall enact that any existing law, or part thereof, shall be applicable, except by inserting it in such act.

[Section 17 of article III of the amended constitution of 1846, without change.]

This section does not require the re-enactment of general laws whenever it is necessary to resort to them to carry into effect a special statute. (People ex rel. Comrs. v. Banks, 67 N. Y. 568, 575.)

Where a statute in itself grants some power, confers some right, imposes some duty, or creates some burden or obligation, it does not conflict with this section, because it refers to some other existing statute, general or local, for the purpose of pointing out the procedure, or some administrative detail, necessary for the execution of the power, the enforcement of the right, the proper performance of the duty, or the discharge of the burden or obligation. (People ex rel. Everson v. Lorillard, 135 N. Y. 285, 291; Mallory v. Reichert, 31 Hun, 86.)

Reference for procedure or administrative details is not within the prohibition of this section. (Choate v. City of Buffalo, 39 App. Div. 379.) (1899.) (Matter of Buffalo Traction Co., 25 id. 447.) (1898.)

Does not apply to an act purporting to amend existing laws. (People ex rel. Elec., etc., Co. v. Squires, 107 N. Y. 602.)

Prior to this section, a repealed act might have been incorporated in an existing law by reference. (Blauvelt v. Nyack, 9 Hun, 153. See also Curtin v. Barton, 139 N. Y. 505, 514; Matter of Application of Union Ferry Co., 98 id. 158; People ex rel. Stevens v. Hayt, 7 Hun, 39; Wells v. City of Buffalo, 14 id. 438; Matter of Mayor, etc., of New York, 34 id. 441; Nash v. White's Bank of Buffalo, 37 id. 57; S. C., 105 N. Y. 243; Weinckie v. N. Y. C. & H. R. R. R. Co., 61 Hun, 619.)

For recent decisions considering this section, see People ex rel. Golden v. Roosevelt, 24 App. Div. 17 (1897); People ex rel. Weaver v. Van de Car, 150 N. Y. 439 (1896); Swikehard v. Michaels, 81 Hun, 325 (1894); Winfield v. Bruning, 89 Hun, 124 (1895).

The statute declaring the sanitary code to be binding and in force in the city of New York held constitutional since

the sanitary code was not an existing law of the state within the meaning of this section and was not declared applicable to or made a part of such act. (People v. Davis, 78 App. Div. 570.) (1903.)

[As to what are private and local bills, see § 16, ante, and cases cited.]

Cases in which private and local bills shall not be passed; restrictions as to laws authorizing street railroads.— § 18. The Legislature shall not pass a private or local bill in any of the following cases:

Changing the names of persons.

Has no application to corporations. (Moran v. Lydecker, 27 Hun, 585.)

Laying out, opening, altering, working or discontinuing roads, highways or alleys, or for draining swamps or other low lands.

The legislature may, nevertheless, confer the power it before possessed upon boards of supervisors. (People ex rel. Morrill v. Supervisors of Queens 112 N. Y. 585; People ex rel. Comrs. v. Banks, 67 id. 568.) Not applicable to act laying out city street (Matter of Lexington Ave., 29 Hun, 303; Matter of Woolsey, 95 N. Y. 135, revg. 29 Hun, 629); nor to provision in village charter authorizing board of trustees to widen a street. (People v. Lohnas, 54 Hun, 604. See also Matter of Church, 92 N. Y. 1; Treanor v. Eichhorn, 74 Hun, 58; Weincke v. N. Y. Cent. & H. R. R. R., 61 id. 619; Swikehard v. Michaels [Sp. T., Sup. Ct.], 8 Misc. Rep, 568.)

The term "highways," as used in the constitution, does not include streams of water or water highways. (DeCamp v. Dix, 159 N. Y. 436.) (1899.) (Matter of Burns, 155 N. Y. 23.) (1898.)

Chapter 1018, Laws of 1895, authorizing the city of Rochester to acquire the shores of Hemlock lake for the protection of its water supply and to change highways within the portions taken is constitutional. (City of Rochester v. Gray, 138 App. Div. 852.) (1909.)

The provision of the constitution that laws for the improvement of highways shall be general applies only to the construction or building of highways, and not to their maintainance. (Matter of Business Mens' Association, 54 Misc. Rep. 13.)

Locating or changing county seats.

Under this prohibition, the legislature cannot validate a resolution of a board of supervisors changing the county seat which depended for its passage upon the vote of one who acted as a member without color of authority, as such ratification would be in fact the enactment of a change by the legislature. (Williams v. Boynton, 147 N. Y. 426.) (1895.)

The supervisors of Steuben county have power under subdivision 13 of section 12 of the county law, to erect a courthouse in the city of Hornellsville, and to appropriate money therefor, as such action does not change the county seat. (Lyons v. Board of Supervisors, 115 App. Div. 193.) (1906.)

Providing for changes of venue in civil or criminal cases.

The removal of an action from the justice's court of the city of Yonkers to the city court of that city is a change of form, not of venue, and is not prohibited by this action. (Doran v. Bussard, 38 App. Div. 30.) (1899.)

Provision in charter of cities of second class requiring actions against city, etc., to be brought in county in which city is situated, relates only to transitory actions and does not affect provisions of Code as to place of trial of actions affecting real property. It does not violate provisions of this section prohibiting passage of private or local bill providing for change of venue in civil or criminal actions. (Czarnowsky v. City of Rochester, 55 App. Div. 388.)

Provision in domestic commerce law that if the venue of an act to recover penalty is laid in the county where the owner, dealer or shipper resides it shall not be changed for any cause is unconstitutional. (Warner v. Palmer, 66 App. Div. 127.) (1902.)

Incorporating villages.

"An act to amend and consolidate the charter of the village of Waterloo" not in violation of this provision. (Reed v. Schmit, 39 Hun, 223.)

Providing for election of members of boards of supervisors.

An act providing for the length of term of supervisors in but four counties is unconstitutional. (People ex rel. Hassell v. Hoffman [Sp. T.], 60 How. Pr. 324.)

This provision applies to town, not to city supervisors. A provision of a city charter allowing the supervisors or each ward to be "elected by the electors of each ward" is valid. (People ex rel. Clancy v. Supervisors, 139 N. Y. 524.)

Selecting, drawing, summoning or impaneling grand or petit jurors.

Chapter 564, Laws of 1902, in so far as it provides for a commissioner of jurors in Kings county does not offend the constitution. (Coler v. Brooklyn Daily Eagle, 133 App. Div. 300.) (1909.)

(See People v. Petrea, 92 N. Y. 128.)

An act confined in operation to each county containing a population of 500,000 or more, not violative of this subdivision. (People v. Dunn, 157 N. Y. 528.) (1898.)

An act providing for selection of special jurors in counties of certain population, not violative of this section, distinguishing Henneberger Case, 155 N. Y. 420. There are

good reasons why in a general law reference should be made to conditions of population. (People v. Dunn, 157 N. Y. 528.) (1899.)

Regulating the rate of interest on money.

The opening and conducting of elections or designating places of voting.

Creating, increasing or decreasing fees, percentages or allowances of public officers, during the term for which said officers are elected or appointed.

An act increasing fees of sheriff of Kings county, which did not in terms apply to the sheriff in office, held constitutional. (Kerrigan v. Force, 68 N. Y. 381.) Does not apply to officers having fixed salaries (Mangam v. Brooklyn, 98 id. 585); nor to an act relating to the compensation of certain county treasurers, which does not in terms apply to county treasurers in office at the time of its passage. (Supervisors of Seneca v. Allen, 90 id. 532. See also Cole v. State, 102 id. 48; People ex rel. Lynch v. Duffy, 49 Hun, 276; Ricketts v. Mayor, 67 How. Pr. 320.)

There are no public officers in the state whose compensation may not be increased or diminished by the legislature during their terms of office, except the state officers named in the constitution, judges of the court of appeals, justices of the supreme court and county judges and surrogates. All other public officers are subject to the power of the legislature to increase or diminish their compensation at any time provided it be done by general law. The inhibition is against such legislation by local or private bills only and not to enactments accomplishing those subjects by general law. (Mangam v. City of Brooklyn, 98 N. Y. 585.)

Granting to any corporation, association or individual the right to lay down railroad tracks.

An act amending an act authorizing corporations created for the transmission of letters, etc., in the cities of New

York and Brooklyn, by adding the words "and to provide for the transportation of passengers in said tubes," held unconstitutional. (Astor v. Arcade R. R. Co., 113 N. Y. 93.) An act authorizing the construction of an "illustrative section" of elevated railroad, held void. (People ex rel. Harvey v. Loew, 102 id. 471.) An act extending the expired time of a railroad is invalid. (Matter of Brooklyn, etc., R. R. Co., 75 id. 335.) Authority to change motive power, although it necessitates a change of rails, is not invalid. (People v. L. I. R. R. Co. [Sp. T.], 9 Abb. N. C. 181; Matter of N. Y. El. R. R., 70 N. Y. 327, where the subject is thoroughly discussed.) The regulation of an existing right is not within this prohibition. (Gilbert El. R. R. Co. v. Anderson, 3 Abb. N. C. 434. See also Farnham v. Benedict, 107 N. Y. 159; Matter of N. Y. & L. I. Bridge Co., 54 Hun, 400.) Has no reference or application to a municipality. (Sun Printing, etc., Co. v. Mayor, 152 N. Y. 257.) (1897.)

The consolidation of two railroad corporations by special act is not unconstitutional. (Bohmer v. Haffen, 22 Misc. Rep. 565.) (1898.)

A provision in a charter of a bridge company authorizing it to provide for the transportation of vehicles of every description does not include the right to lay railroad tracks and such an act is not rendered unconstitutional thereby. (Matter of N. Y. & Long Island Bridge Co., 148 N. Y. 540.) (1896.)

An act which secures to a railroad company the franchises of another railroad company purchased by it is unconstitutional in so far as it authories the laying down of tracks in addition to those authorized by the franchises so purchased. Auchincloss v. Met. El. R. R. Co., 69 App. Div. 63.) (1902.)

An act provided for the consolidation of the corporate stock and property of railroads within certain territory and the effect of such consolidation was to enable the new corporation to succeed to all of the rights and privileges of the consolidated companies, including such rights as they had under the railroad law. There is a distinction between the grant of a right and the regulation of rights previously granted. A private or local bill may regulate the powers,

rights, privileges and franchises previously possessed, including the regulation and control of the right to lay down tracks previously existing. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

Chapter 151, Laws of 1892, ratifying the so-called "Milburn Agreement" made between a certain local street railway in the city of Buffalo and the authorities of that city, for the purpose of settling controversies between them and said city, is not in violation of the constitution (§ 18, art. 3.) (Kuhn v. Knight, 115 App. Div. 837.) (1906.)

Street Railroads.

Neither the legislature nor the public service commission can dictate to local authorities the terms and conditions they shall describe for the operation of a street surface railroad. (People ex rel. South Shore Traction Co. v. Wilcox, 133 App. Div. 556. (1909.)

The legislature has authority to vest in the board of estimate and apportionment, to the exclusion of the board of alderman, the power to give consent to the use of the streets of New York city by corporations duly organized to construct telephone lines and surface railroads. (Pettit v. McClellan, 110 App. Div. 390.) (1905.)

Granting to any private corporation, association or individual any exclusive privilege, immunity or franchise whatever.

Designed to prohibit original and independent grants. An act restricting and regulating an existing right is not within this prohibition. (Matter of Gilbert El. R. R., 70 N. Y. 361. See Matter of Application of Union Ferry Co., 98 id. 139; Syracuse Water Co. v. Syracuse, 116 id. 167, 186; Trustees of Firemen's Fund v. Roome, 93 id. 314; Moran v. L. I. City, 101 id. 439.)

"An act for the better protection of skilled labor and for the registration of labels, etc.," is not a private or local bill but is in every sense a general law. The legislature is authorized to grant an exclusive privilege or franchise under

a general law and such grant is not against public policy but is in accord with the policy of the state. (Perkins v. Heert, 158 N. Y. 306.) (1899.)

Law authorizing incorporation of but one society in county and permitting such society to appropriate, harbor or keep dogs without paying license fee while every citizen is obliged to pay such license fee, grants an exclusive privilege and immunity forbidden by the constitution. (Fox v. Mohawk & H. R. Humane Soc., 165 N. Y. 517.) (1901.)

An act exempting a railroad company from the expense of paying the railroad strip does not grant an exclusive immunity The true test as to whether a franchise, privilege or immunity is an exclusive one is not whether all others are excluded from the enjoyment of that particular grant, but whether all others are to be excluded from the enjoyment of a like grant. It is not whether others enjoy a similar privilege, immunity or franchise but are others prohibited from the similar enjoyment by reason of the enactment. (Weed v. Common Council, 26 Misc. Rep. 208.) (1899.)

An act authorizing the consolidation of railroad corporations does grant an exceptional privilege but does not grant an exclusive privilege, immunity or franchise within the meaning of the constitution. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

A franchise granted by the village to a water company to supply the village with water is not exclusive and the village may grant a franchise to another corporation to carry on the same business in the same territory, and under the authority acquired from the legislature the municipality has the power to determine that the rights so reserved shall be exercised by the municipality itself. (Skaneateles W. W. Co. v. Skaneateles, 161 N. Y. 154.) (1900.)

An act prohibiting the use of soft coal for fuel in the furnaces of certain factories except for the purpose of welding iron or steel does not grant an exclusive privilege. (Brooklyn v. Nassau El. R. R. Co., 44 App. Div. 462.) (1899.)

Granting to any person, association, firm or corporation, an exemption from taxation on real or personal property.

[Amended by vote of the people, Nov. 5, 1901.]

Providing for building bridges, and chartering companies for such purposes, except on the Hudson river below Waterford, and on the East river, or over the waters forming a part of the boundaries of the state.

It may nevertheless confer the power of local legislation in regard to building bridges upon board of supervisors. (Town of Kirkwood v. Newberry, 122 N. Y. 571. See People ex rel. Keene v. Board of Supervisors of Queens, 142 id. 271; Wrought Iron Bridge Co. v. Attica, 119 id. 204.)

The legislature was and is under no constitutional restriction in "providing for building bridges and chartering companies for such purposes * * * on the East river. It had full power to provide for and to regulate the construction, control, care, management and operation of the Williamsburg bridge, and it could delegate its powers in that regard." (Schinzel v. Best, 48 Misc. Rep. 224.) (1905.)

The legislature shall pass general laws providing for the cases enumerated in this section, and for all other cases which in its judgment, may be provided for by general laws. But no law shall authorize the construction or operation of a street railroad except upon the condition that the consent of the owners of one-half in value of the property bounded on, and the consent also of the local authorities having the control of, that portion of a street or highway upon which it is proposed to construct or operate such railroad be first obtained, or in case the consent of such property owners

cannot be obtained, the Appellate Division of the Supreme Court, in the department in which it is proposed to be constructed, may, upon application, appoint three commissioners who shall determine, after a hearing of all parties interested, whether such railroad ought to be constructed or operated, and their determination, confirmed by the court, may be taken in lieu of the consent of the property owners.

[Section 18 of article III of the amended constitution of 1846 amended by changing the words "general term of the supreme court, in the district" in the last paragraph to appellate division of the supreme court, in the department."]

The provisions of the last paragraph of section 18 in reference to consent do not apply to the streets of New York city, the title to those streets being in the city. (In re Gilbert El. R. R. Co., 70 N. Y. 631.)

This paragraph does not prevent the imposing of further conditions not inconsistent herewith. (Matter of Thirty-fourth St. R. R. Co., 102 N. Y. 343.)

Refers to a part of a road as well as to a complete railroad. (Matter of Metropolitan Transit Co., 111 N. Y. 588.)

The powers and franchises of street railroad corporations existing prior to January 1, 1875, may be regulated without violating this provision. (Matter of Petition of Third A. R. R. Co., 121 N. Y. 536.)

The legislative power to authorize the construction of a street railway is subject to the limitation that the franchise is granted for public purposes. (Fanning v. Osborne, 102 N. Y. 441.)

Section 78 of the railroad law authorizing lease of railroad, being a revision of Laws 1839, chapter 218, held constitutional. The lessee road is not required to obtain consents of abutting owners. (Ingersoll v. Nassau Elec. R. R. Co., 157 N. Y. 453.) (1898.)

The provision of a railroad law authorizing railroad corporations to contract with each other for the use of their roads has not been affected by the amendments to this section and the exercise of that right is not dependent upon the obtaining by the assignee company of the consents of abutting owners to such use of the street by it. (Ingersoll v. Nassau Elec. R. R. Co., 157 N. Y. 453.) (1899.)

Although the consent of local authorities to the construction of a street railroad is required, nevertheless, the power to grant franchises including the control of the streets is in the state, and the legislature may restrict the authority of the municipality to dispose of the same. Where such restriction included the payment of percentages upon receipts such payment must be made. (Heerwagen v. Crosstown St. Ry. Co., 90 App. Div. 275.) (1904.)

An act authorizing the consolidation of railroad corporations does not violate this section inasmuch as the consolidated company is subject to the burdens, obligations and liabilities imposed by law upon the corporations consolidated. The legislative grant of the right to consolidate is not forbidden by the constitution. (Bohmer v. Haffin, 161 N. Y. 390.) (1900.)

A town supervisor who is made a park commissioner by a law authorizing the town to issue bonds and devote the proceeds to the acquisition of lands for a public park, the commissioners to receive no compensation, is entitled to commissions on moneys not paid as provided by the town law, because his function as supervisor in paying out the money is separate and distinct from his function as a park commissioner. (People ex rel. Studwell v. Archer, 142 N. Y. 71.) (1910.)

Private claims not to be audited by Legislature.—§ 19. The Legislature shall neither audit nor allow any private claim or account against the State, but may appropriate money to pay such claims as shall have been audited and allowed according to law.

[Section 19 of article III of the amended constitution of 1846, without change.]

For laws creating and regulating the court of claims, see L. 1883, chap. 205; L. 1884, chap. 334; L. 1884, chap. 85; L. 1884, chap. 329; L. 1884, chap. 336; L. 1885, chap. 135; L. 1885, chap. 355; L. 1887, chap. 36; and amendatory acts [R. S., 8th ed., pp. 538–46].

This section prohibits the legislature from auditing claims, but recognizes its power to authorize appropriate tribunals to do so. (Cole v. State, 102 N. Y. 48, 52.)

In this respect its power is not confined to strictly legal claims. (Id.)

Section cited in Swift v. State, 89 N. Y. 66.

Two-thirds bills.— § 20. The assent of two-thirds of the members elected to each branch of the legislature shall be requisite to every bill appropriating the public moneys or property for local or private purposes.

[Section 9 of article I of the amended constitution of 1846, without change.]

(For law requiring certificate of presiding officer, see Legislative L., § 40.)

Where the appropriation is for state purposes, though the expenditure is confined to a locality, it does not require a two-thirds vote. Money may be appropriated to pay individuals for property purchased for the state or for salaries or wages without a two-thirds vote. (Sweet v. Syracuse, 129 N. Y. 316, 347.)

The courts may inquire whether an appropriation is public, and if private or local, whether it received the assent of two-thirds of the members of each house. (W. W. M. Co. v. Shanahan, 128 N. Y. 345, 358.)

The law must show on its face the requisite vote. (People ex rel. Purdy v. Commissioners, 54 N. Y. 276.) Resort may be had to the original law to determine whether it received the requisite two-thirds vote. (Rumsey v. N. Y. & N. E. R. R. Co., 130 id. 88.) Or if the certificate is defective and does not state by what vote the bill was passed, to the journal of the house. (Id.)

A certificate in due form, free from defects and clerical errors, would doubtless be conclusive. (Id.; People v. Devlin, 33 N. Y. 269.)

An appropriation is local when money is to be expended in a particular locality and the people of that locality are

to be directly and mainly benefited, although the public are remotely and incidentally benefited also. (People v. Allen, 42 N. Y. 378, 383.)

An act (L. 1868, chap. 776) vesting in a certain town real estate of the state required a two-thirds vote. (People ex rel. Purdy v. Commissioners, 54 N. Y. 276.)

An act authorizing the treasurers of certain counties to retain commissions allowed on the collection of state taxes is not within the section. (Bd. of Supervisors of Seneca v. Allen, 99 N. Y. 532.)

This section is no limitation on the power of the legislature to assess or tax the cost of a local improvement upon a locality. (People ex rel. N. Y. & H. R. R. Co. v. Havemeyer, 47 How. Pr. 494, 513; Town of Guilford v. Cornell, 18 Barb. 615.)

An act declaring the arrears of salaries of county officers a county charge, and directing the board of supervisors to audit and allow their accounts therefor, is not within this section. (Morris v. People, 3 Den. 381.)

The "public moneys or property" of the state means property belonging to the state strictly, such as the collected revenues of the state, the buildings owned by the state, the state canals, etc. (Matter of the Taxpayers of Kingston [Co. Ct.], 40 How. Pr. 444. See also Trustees of Exempt Firemen's Fund v. Roome, 93 N. Y. 313; People v. Supervisors of Chenango, 8 id. 324; Englishbee v. Helmuth, 3 N. Y. 294.)

The liquor tax law does not appropriate public money for local purposes within article 3, section 20, and the act did not require the assent of two-thirds of the members of the legislature. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

The inhibition of the constitution, in reference to "Two-Thirds Bills" (§ 20, art. 3), has reference to the public moneys of the state as distinguished from public revenues for taxes levied for local purposes, but does not apply to a statute the scheme of which is to raise revenue for the general government of the state and for the various

local governments within the state by the apportionment of a tax laid upon a certain species or class of possessions. Mortgage tax law, chapter 729, Laws of 1905, did not therefore require a two-thirds affirmance vote for its valid passage. (People ex rel. Eismann v. Rouner, 185 N. Y. 285.) (1906.) (110 App. Div. 816 affd.)

The charter of the Niagara County Irrigation and Water Supply Co. (L. 1891, chap. 259, §§ 4 and 6) authorizing said corporation to take water from the Niagara river, does not appropriate any property of the state to the use of said corporation entire in the waters or bed of the stream; and hence said act did not violate section 9 of article 1 of the constitution of 1846 (which is the same as section 20 of article 3 of the constitution of 1894) in not receiving the assent of two-thirds of the members elected to each branch of the legislature. The state has no ownership in the waters of Niagara river. (Niagara County I. & W. S. Co. v. College Heights Land Co., 111 App. Div. 770.) (1906.)

Sections 62-66 of the railroad law as to the eliminating of dangerous grade crossings do not require the assent of two-thirds of the members elected to each branch of the legislature, and said sections are a valid exercise of the police power. (Matter of N. Y. C. & H. R. R. Co., 136 App. Div. 760.) (1910.)

Appropriation bills.—§ 21. No money shall ever be paid out of the treasury of this State, or any of its funds, or any of the funds under its management, except in pursuance of an appropriation by law; nor unless such payment be made within two years next after the passage of such appropriation act; and every such law making a new appropriation or continuing or reviving an appropriation, shall distinctly specify the sum appropriated, and the object to which it is to be applied; and it shall not be sufficient for such law to refer to any other law to fix such sum.

Money received by loan commissioners upon a contract of sale becomes a part of the state funds and cannot be taken from the state except by an appropriation by the legislature. (Switzer v. Commissioners for Loaning Moneys, etc., 134 App. Div. 487.) (1909.)

[Section 8 of article VII of the amended constitution of 1846, without change.]

An act directing the application of taxes assessed on railroads to the redemption of municipal bonds, not violative of this section. (Matter of Clark v. Sheldon, 106 N. Y. 104.)

A legacy to an unknown person paid into the treasury pursuant to Code of Civil Procedure is not within the prohibition of this section, and may be paid out without an appropriation. (Evans v. Chapin, 101 N. Y. 682. See also People v. Canal Board, 75 id. 390, 399.)

Restrictions as to provisions in the appropriation or supply bills.— § 22. No provision or enactment shall be embraced in the annual appropriation or supply bill, unless it relates specifically to some particular appropriation in the bill; and any such provision or enactment shall be limited in its operation to such appropriation.

[New.]

Certain sections not to apply to commission bills.— § 23. Sections seventeen and eighteen of this article shall not apply to any bill, or the amendments to any bill, which shall be reported to the legislature by commissioners who have been appointed pursuant to law to revise the statutes.

[Section 25 of article III of the amended constitution of 1846, without change.]

In the absence of proof to the contrary it will be presumed that an act originated in a bill so reported. (People v. Petrea, 92 N. Y. 128, 138.)

Tax bills to state tax distinctly.— § 24. Every law which imposes, continues or revives a tax shall distinctly state the tax and the object to which it is to be applied, and it shall not be sufficient to refer to any other law to fix such tax or object.

[Section 20 of article III of the amended constitution of 1846, without change.]

Applies only to a general tax upon all the property of the state, and was not intended to apply to a local tax. (Jones v. Chamberlain, 109 N. Y. 109; Harlem R. R. Co. v. Havemeyer, 4 T. & C. 65.)

Applies only to the annual recurring taxes known at the time of the adoption of the provision imposed generally on all the property of the state, and not to a special tax (inheritance tax). (Matter of McPherson, 104 N. Y. 306.)

Does not apply to an act directing the application of railroad taxes. (Matter of Clark v. Sheldon, 106 N. Y. 104.)

A tax law imposing a tax of three and a half mills per dollar, "or so much thereof as may be necessary," held void. (People ex rel. Hopkins v. Supervisors of Kings, 52 N. Y. 556.)

A law imposing a tax otherwise valid is not impaired by vetoes of items in appropriation bills whereby such bills do not appropriate all the money which will probably be received under such tax. (Matter of Attorney-General, 58 Hun, 218.)

An act requiring insurance companies of another state to pay an amount equal to that imposed by the state of their origin on companies of this state is in the nature of a license fee and not prohibited by this section. (People v. Fire Association of Phila., 92 N. Y. 311.)

Mere modification in the process of collecting a tax does not violate this section. (People v. Supervisors of Ulster, 36 Hun, 491, 496. See also People ex rel. Burrows v. Supervisors of Orange, 17 N. Y. 235; Hurlburt v. Banks, 1 Abb. N. C. 157; Pumpelly v. Owego, 45 How. Pr. 219; People v. Nat. Fire Ins. Co., 27 Hun, 188; People v. Floating Dry Dock Co., 11 Abb. N. C. 40; Spencer v. Merchant, 100 N. Y. 585; W. I. B. Co. v. Town of Attica, 119 N. Y. 204.)

When ayes and nays necessary; three-fifths to constitute quorum.—§ 25. On the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

[Section 21 of article III of the amended constitution of 1846, without change.]

The provision requiring the presence of three-fifths has no reference to the passage of a military law by which a commutation tax is imposed. (People v. The Supervisors of Chenango, 8 N. Y. 317.)

Laws 1855, chapter 428, "An act for compensating parties whose property may be destroyed in consequence of mobs and riots," did not require three-fifths to constitute a quorum, although it might result in creating a local charge. (Darlington v. Mayor, etc., of N. Y., 31 N. Y. 164, 185. See also Trustees of Exempt Firemen's Fund v. Roome, 93 id. 313; Pumpelly v. Owego, 45 How. Pr. 219.)

The presiding officers of the senate and assembly, who are required by section 40 of the legislative law to append to a bill passed by either house a certificate stating the number of members present at its passage, etc., which certificate shall be conclusive evidence thereof, have no power, after the adjournment of said houses, to file amended certificates correcting errors in the original certificate, and such amended certificates are not evidence that the required number of members were present at the passage of a tax law. (Matter of Stickney, 110 App. Div. 294.) (1905.) (See annotation to § 11 of this art. Affd., 185 N. Y. 107.)

As section 25 of article 3 of the constitution requires that on a vote on tax measures three-fifths of all members elected to either house shall be necessary to a quorum, and that the vote be entered on the minutes, such minutes are the original and conclusive evidence of the facts, and resort may be had thereto for proof to supplement defective or insufficient certificate of the presiding officer to sustain a statute, although the certificates filed by the presiding officers of said houses do not show that the required three-fifths were present. (Matter of Stickney, 110 App. Div. 294.) (1906.) (Affd., 185 N. Y. 107.) (1906.)

Boards of supervisors.— § 26. There shall be in each county, except in a county wholly included in a city, a board of supervisors, to be composed of such members and elected in such manner and for such period as is or may be provided by law. In a city which includes an entire county, or two or more entire counties, the powers and duties of a board of supervisors may be developed upon the municipal assembly, common council, board of aldermen or other legislative body of the city.

[Section 22 of article III of the amended constitution of 1846, as amended and adopted November 7, 1899.]

The provisions of the law creating the county of Nassau that the supervisors of the towns therein shall constitute the board of supervisors of the county does not violate this section. (Matter of Noble, 34 App. Div. 55.) (1898.)

An act providing that existing supervisors in certain towns shall constitute the board of supervisors of a newly-erected county (Nassau) does not contravene this section. (Matter of Noble, 34 App. Div. 55.) (1898.)

A board of supervisors of a county has implied powers to employ an attorney and counsel when the necessity arises therefor; but has, however, no power to appoint such for a term of one year at a yearly salary, thus preventing their successors from exercising the right to change their counsel. (Vincent v. County of Nassau, 45 Misc. Rep. 247.) (1904.)

Local legislative powers.— § 27. The Legislature shall, by general laws, confer upon the boards of supervisors of the several counties of the State such further powers of local legislation and administration as the Legislature may, from time to time, deem expedient, and in counties which now have, or may hereafter have, county auditors or other fiscal officers, authorized to audit bills, accounts, charges, claims or demands against the county, the Legislature may confer such powers upon said auditors, or fiscal officers, as the Legislature may, from time to time deem expedient.

[Section 23 of article III of the amended constitution of 1846, as amended and adopted November 2, 1909.]

While the legislature is prohibited from passing a local bill laying out, opening, etc., highways, it may confer such power on the boards of supervisors. (Town of Kirkwood v. Newbury, 122 N. Y. 571, 576; People ex rel. Morrill v. Supervisors, 122 id. 585.)

An act providing that the board of supervisors may fix salary of county treasurer is valid. (Board of Supervisors of Seneca v. Allen, 99 N. Y. 532.)

An act giving to boards of supervisors in counties containing a city of over 100,000, where contiguous territory has been mapped out into streets, etc., power to lay out, open and grade the same, and to assess therefor, is not a local law under this section. (Matter of Church, 92 N. Y. 1.)

An act authorizing boards of supervisors to make local laws for the protection of shell fish is constitutional. (Smith v. Levinus, 8 N. Y. 472; Hallock v. Dominy, 7 Hun, 52. See People ex rel. Martin v. Earle, 47 How. Pr. 458.)

Legislature has power to appoint persons to become the agents of the state in carrying out a local improvement, who are not thereby constituted local officers, although the power to make such improvements is at that time vested in local authorities elected by the people. (People v. Supervisors of Oneida County, 170 N. Y. 105.) (1902.)

Extra compensation prohibited.— § 28. The Legislature shall not, nor shall the common council of any city, nor any board of supervisors, grant any extra compensation to any public officer, servant, agent or contractor.

[Section 24 of article III of the amended constitution of 1846, without change.]

A resolution of the supervisors of Albany county giving a clerk to the coroners of such county, not violative of this section. (People ex rel. Masterson v. Gallup [Sp. T. Sup. Ct.], 65 How. Pr. 108; S. C., 12 Abb. N. C. 65.)

Increase of salary for remainder of term not unconstitutional. (Truesdale v. City of Rochester, 33 Hun, 574. See Cole v. State, 102 N. Y. 48, 58.)

Statute directing board of education to place teachers on pension list who retired before the establishment of pension system unconstitutional. (Mahon v. Board of Education, 171 N. Y. 263.) (1902.)

It seems that the district attorney of the county where an indictment is found continues in charge of the case alhough it be removed to another county for trial.

Though the trial of an indictment is changed to another county, and the district attorney of that county is employed by the district attorney of the county from which the cause

was removed to assist at the trial thereof, he is not entitled to additional compensation for his services, the same being prohibited by section 28 of article 3 of the constitution. (People v. Neff, 121 App. Div. 44.) (1907.)

A town supervisor who is made a park commissioner by a law authorizing the town to issue bonds and devote the proceeds to the acquisition of lands for a public park, the commissioners to receive no compensation, is entitled to commissions on moneys not paid as provided by the town law, because his function as supervisor in paying out the money is separate and distinct from his function as a park commissioner. (People ex rel. Studwell v. Archer, 142 N. Y. 71.) (1910.)

Prison labor; contract system abolished.— § 29. The Legislature shall, by law, provide for the occupation and employment of prisoners sentenced to the several State prisons, penitentiaries, jails and reformatories in the State; and on and after the first day of January, in the year one thousand eight hundred and ninety-seven, no person in any such prison, penitentiary, jail or reformatory, shall be required or allowed to work, while under sentence thereto, at any trade, industry or occupation, wherein or whereby his work, or the product or profit of his work, shall be farmed out, contracted, given or sold to any person, firm, association or corporation. This section shall not be construed to prevent the Legislature from providing that convicts may work for, and that the products of their labor may be disposed of to, the State or any political division thereof, or for or to any public institution owned or managed and controlled by the State, or any political division thereof.

[New.]

The provisions of law abrogated by this section are in Laws of 1889, chap. 382, article 3, amending the revised statutes.

When a contract for prison labor provides that in the case by the intervention of legislative or other authoritative ruling outside of and beyond the reasonable control of the first party (the representative of the state) it shall at any time become necessary to discontinue the business * * * the second party (the contractor) shall not have for that reason any claim for damages against the first party, the rescission of such contract by the first party by reason of the subsequent adoption of section 29 of article 3, and passage of laws therewith prohibiting the favoring act of such labor, does not entitle the contractor to damages from the state by reason of such rescission. (Mills Co. v. State of New York, 110 App. Div. 843.) (1906.)

ARTICLE IV.

Executive power.—Section 1. The executive power shall be vested in a Governor, who shall hold his office for two years; a Lieutenant-Governor shall be chosen at the same time, and for the same term. The Governor and Lieutenant-Governor elected next preceding the time when this section shall take effect, shall hold office until and including the thirty-first day of December, one thousand eight hundred and ninety-six, and their successors shall be chosen at the general election in that year.

[Section 1 of article IV of the amended constitution of 1846, amended by changing the term of office of the governor and lieutenant-governor from three to two years.]

Qualifications of Governor and Lieutenant-Governor.—§ 2. No person shall be eligible to the office of Governor or Lieutenant-Governor, except a citizen of the United States, of the age of not less than thirty years,

and who shall have been five years next preceding his election a resident of this State.

[Section 2 of article IV of the amended constitution of 1846, without change.]

Election of Governor and Lieutenant-Governor.— § 3. The Governor and Lieutenant-Governor shall be elected at the times and places of choosing members of the Assembly. The persons respectively having the highest number of votes for Governor and Lieutenant-Governor shall be elected; but in case two or more shall have an equal and the highest number of votes for Governor, or for Lieutenant-Governor, the two houses of the Legislature at its next annual session shall forthwith, by joint ballot, choose one of the said persons so having an equal and the highest number of votes for Governor or Lieutenant-Governor.

[Section 3 of article IV of the amended constitution of 1846, without change.]

Duties and powers of Governor; compensation.— § 4. The Governor shall be Commander-in-Chief of the military and naval forces of the State. He shall have power to convene the Legislature, or the Senate only, on extraordinary occasions. At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration. He shall communicate by message to the Legislature at every session the condition of the State, and recommend such matters to it as he shall judge expedient. He shall transact all necessary business with the officers of government, civil

and military. He shall expedite all such measures as may be resolved upon by the Legislature, and shall take care that the laws are faithfully executed. He shall receive for his services an annual salary of ten thousand dollars, and there shall be provided for his use a suitable and furnished executive residence.

[Section 4 of article IV of the amended constitution of 1846, amended by a change of the word "them" to "it," referring to the legislature, in the fourth sentence.]

The governor, as commander-in-chief of the military forces of the state, has power to consolidate companies and regiments (People v. Ewen, 17 How. Pr. 375); also to disband them. (People ex rel. Leo v. Hill, 126 N. Y. 497.)

No action can be maintained to recover any part of money appropriated by law to the governor for incidental expenses; the propriety of the expenditure is discretionary and not subject to judicial cognizance. (People v. Lewis, 7 Johns. R. 72.)

The governor is not required to recommend any subject in a proclamation, convening the legislature in extraordinary session. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

An extraordinary session of the legislature can make a valid and constitutional apportionment. (People ex rel. Carter v. Rice, 135 N. Y. 473.)

Reprieves, commutations, and pardons to be granted by Governor.— § 5. The Governor shall have the power to grant reprieves, commutations and pardons after conviction, for all offenses except treason and cases of impeachment, upon such conditions and with such restrictions and limitations, as he may think proper, subject to such regulations as may be provided by law

relative to the manner of applying for pardons. Upon conviction for treason, he shall have power to suspend the execution of the sentence, until the case shall be reported to the Legislature at its next meeting, when the Legislature shall either pardon, or commute the sentence, direct the execution of the sentence, or grant a further reprieve. He shall annually communicate to the Legislature each case of reprieve, commutation or pardon granted, stating the name of the convict, the crime of which he was convicted, the sentence and its date, and the date of the commutation, pardon or reprieve.

[Section 5 of article IV of the amended constitution of 1846, without change.]

No pardon granted to any person imprisoned for life shall restore him to the rights of any previous marriage, or to the guardianship of any children the issue of such marriage. (R. S., Pt. II, chap. 8, tit. 1, § 7; R. S., 8th ed., p. 2596.)

A pardon that contains a provision that it shall not remove disabilities is void. (People v. Pease, 3 Johns. Cas. 333.)

A court cannot go behind a pardon to inquire into its regularity, although fraudulently obtained. (In re Edymoin, 8 How. Pr. 478.)

In case of a breach of a conditional pardon, the recipient may be remanded, and the original sentence executed. (People v. Potter, 1 Park. Cr. 47; Matter of Whalen, 47 St. Rep. 313.)

A statute which in term authorizes courts of criminal jurisdiction to suspend sentence in certain cases, after con-

viction, is not violative of this section. (People ex rel. v. Court of Sessions, 141 N. Y. 288.)

The distinction between the power to suspend sentence and the power to pardon pointed out. (Id.)

State prison law providing for release of prisoners by parole board does not infringe upon governor's pardoning power. (People v. Warden of Sing Sing, 39 Misc. Rep. 113.) (1902.)

The power of suspending judgment after conviction is resident in the court of general sessions as an inherent right; and statutes which in precise terms confer such power upon courts of record having criminal jurisdiction are to be treated as recognizing this inherent judicial function, and not as invading the pardoning power. (People ex rel. Sullivan v. Flynn, 55 Misc. Rep. 639.) (1907.)

The governor may commute a sentence of death for murder in the first degree to imprisonment for life. (People ex rel. Patrick v. Frost, 133 App. Div. 179.) (1909.)

When Lieutenant-Governor to act as Governor.— § 6. In case of the impeachment of the Governor, or his removal from office, death, inability to discharge the powers and duties of the said office, resignation, or absence from the State, the powers and duties of the office shall devolve upon the Lieutenant-Governor for the residue of the term, or until the disability shall cease. But when the Governor shall, with the consent of the Legislature, be out of the State, in time of war, at the head of a military force thereof, he shall continue Commander-in-Chief of all the military force of the State.

[Section 6 of article IV of the amended constitution of 1846, without change.]

Qualifications and duties of Lieutenant-Governor; succession to the governorship.— § 7. The Lieutenant-Governor shall possess the same qualifications of eligibility for office as the Governor. He shall be president of the Senate, but shall have only a casting vote therein. If during a vacancy of the office of Governor, the Lieutenant-Governor shall be impeached, displaced, resign, die, or become incapable of performing the duties of his office, or be absent from the State, the President of the Senate shall act as Governor until the vacancy be filled or the disability shall cease; and if the President of the Senate for any of the above causes shall become incapable of performing the duties pertaining to the office of Governor, the Speaker of the Assembly shall act as Governor until the vacancy be filled or the disability shall cease.

[Section 7 of article IV of the amended constitution of 1846, amended by adding the provision conferring upon the speaker of the assembly the right of succession to the governorship.]

A vote of the state senate, determined by the casting vote of the president thereof, is a majority vote. (N. Y., L. E. & W. R. R. Co. v. City of Dunkirk, 65 Hun, 494, 500.)

Salary of Lieutenant-Governor.— § 8. The Lieutenant-Governor shall receive for his services an annual salary of five thousand dollars, and shall not receive or be entitled to any other compensation, fee or perquisite, for any duty or service he may be required to perform by the Constitution or by law.

[Section 8 of article IV of the amended constitution of 1846, without change.]

Bills to be presented to Governor; approval; passage of bill by Legislature if not approved.— § 9. Every bill which shall have passed the Senate and Assembly shall, before it becomes a law, be presented to the Governor; if he approve, he shall sign it; but if not, he shall return it with his objections to the house in which it shall have originated, which shall enter the objections at large on the journal, and proceed to reconsider it. If after such reconsideration, two-thirds of the members elected to that house shall agree to pass the bill, it shall be sent together with the objections, to the other house, by which it shall likewise be reconsidered; and if approved by two-thirds of the members elected to that house, it shall become a law notwithstanding the objections of the Governor. In all such cases the votes in both houses shall be determined by yeas and nays, and the names of the members voting shall be entered on the journal of each house respectively. If any bill shall not be returned by the Governor within ten days (Sundays excepted) after it shall have been presented to him, the same shall be a law in like manner as if he had signed it, unless the Legislature shall, by their adjournment, prevent its return, in which case it shall not become a law without the approval of the Governor. No bill shall become a law after the final adjournment of the Legislature, unless approved by the Governor within thirty days after such adjournment. If any bill presented to the Governor contain several items of appropriation of money, he may object to one or more of such items while approving of the other portion of the bill. In such case, he shall append to the bill, at the

time of signing it, a statement of the items to which he objects; and the appropriation so objected to shall not take effect. If the Legislature be in session, he shall transmit to the house in which the bill originated a copy of such statement, and the items objected to shall be separately reconsidered. If on reconsideration one or more of such items be approved by two-thirds of the members elected to each house, the same shall be part of the law, notwithstanding the objections of the Governor. All the provisions of this section, in relation to bills not approved by the Governor, shall apply in cases in which he shall withhold his approval from any item or items contained in a bill appropriating money.

[Section 9 of article IV of the amended constitution of 1846, without change.]

The adjournment referred to in this section is the final adjournment at the close of the session and not the ordinary recess taken from time to time during the continuance of the session. (Hequembourg v. City of Dunkirk, 49 Hun, 550, following the case of Soldiers' Voting Bill, 45 N. H. 607.)

The power of the governor to approve and sign a bill presented to him within ten days previous to adjournment of the legislature does not cease with the adjournment. (People v. Bowen, 21 N. Y. 517.)

ARTICLE V.

State officers.— Section 1. The Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be chosen at a general election, at the times and places of electing the Governor and Lieutenant-Governor, and shall hold their offices for two years, except as provided in section two of this

article. Each of the officers in this article named, excepting the Speaker of the Assembly, shall, at stated times during his continuance in office, receive for his services a compensation which shall not be increased or diminished during the term for which he shall have been elected; nor shall he receive to his use any fees or perquisites of office or other compensation. No person shall be elected to the office of State Engineer and Surveyor who is not a practical civil engineer.

[Sections 1 and 2 of article V of the amended constitution of 1846, consolidated without change.]

First election of State officers.— § 2. The first election of the Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor, pursuant to this article, shall be held in the year one thousand eight hundred and ninety-five, and their terms of office shall begin on the first day of January following, and shall be for three years. At the general election in the year one thousand eight hundred and ninety-eight, and every two years thereafter, their successors shall be chosen for the term of two years.

[New.]

Superintendent of public works; appointment; powers and duties of.— § 3. A superintendent of public works shall be appointed by the Governor, by and with the advice and consent of the Senate, and hold his office until the end of the term of the Governor by whom he was nominated, and until his successor is appointed and qualified. He shall receive a compensation to be fixed

by law. He shall be required by law to give security for the faithful execution of his office before entering upon the duties thereof. He shall be charged with the execution of all laws relating to the repair and navigation of the canals, and also of those relating to the construction and improvement of the canals, except so far as the execution of the laws relating to such construction or improvement shall be confided to the State Engineer and Surveyor; subject to the control of the Legislature, he shall make the rules and regulations for the navigation or use of the canals. He may be suspended or removed from office by the Governor whenever, in his judgment, the public interest shall so require; but in case of the removal of such Superintendent of Public Works from office, the Governor shall file with the Secretary of State a statement of the cause of such removal, and shall report such removal and the cause thereof to the Legislature at its next session. The Superintendent of Public Works shall appoint not more than three assistant superintendents, whose duties shall be prescribed by him, subject to modification by the Legislature, and who shall receive for their services a compensation to be fixed by law. They shall hold their office for three years, subject to suspension or removal by the Superintendent of Public Works, whenever, in his judgment, the public interest shall so require. Any vacancy in the office of any such assistant superintendent shall be filled for the remainder of the term for which he was appointed, by the Superintendent of Public Works; but in case of the suspension or removal of any such assistant superintendent by him, he shall at once

report to the Governor, in writing, the cause of such removal. All other persons employed in the care and management of the canals, except collectors of tolls, and those in the department of the State Engineer and Surveyor, shall be appointed by the Superintendent of Public Works, and be subject to suspension or removal by him. The Superintendent of Public Works shall perform all the duties of the former Canal Commissioners and Board of Canal Commissioners, as now declared by law, until otherwise provided by the Legislature. The Governor, by and with the advice and consent of the Senate, shall have power to fill vacancies in the office of Superintendent of Public Works; if the Senate be not in session, he may grant commissions which shall expire at the end of the next succeeding session of the Senate.

[Section 3 of article V of the amended constitution of 1846, amended, by striking from such section the sentence abolishing the office of canal commissioner.]

Under this section, the superintendent of public works has the exclusive power to select and appoint his subordinates, and to determine as to the propriety of such appointments, and as to their qualifications. (People ex rel. Killeen v. Angle, 109 N. Y. 564.)

A superintendent of public works honestly and fairly exercising his discretion in matters pertaining to the canals, his conduct is not subject to the control or direction of the courts. (Wright v. Shanahan, 61 Hun, 264. See also Yaw v. State, 127 id. 190; Clark v. State, 142 id. 101.)

Superintendent of State prisons, appointment, powers and duties of.— § 4. A Superintendent of State Prisons shall be appointed by the Governor, by and with the

advice and consent of the Senate, and hold his office for five years, unless sooner removed; he shall give security in such amount, and with such sureties as shall be required by law for the faithful discharge of his duties; he shall have the superintendence, management and control of State prisons, subject to such laws as now exist or may hereafter be enacted; he shall appoint the agents, wardens, physicians and chaplains of the prisons. The agent and warden of each prison shall appoint all other officers of such prison, except the clerk, subject to the approval of the same by the Superintendent. The Comptroller shall appoint the clerks of the prisons. The Superintendent shall have all the powers and perform all the duties not inconsistent herewith, which were formerly had and performed by the Inspectors of State Prisons. The Governor may remove the Superintendent for cause at any time, giving to him a copy of the charges against him, and an opportunity to be heard in his defense.

[Section 4 of article V of the amended constitution of 1846, amended. The words "were formerly" in the next section to the last are new, taking the place of the words "have heretofore been." The sentence relating to the abolishing of the office of inspector of state prisons is omitted.]

The power conferred upon the superintendent of state prisons by this section is subject to regulation and control by the legislature. (People ex rel. Griffin v. Lathrop, 71 Hun, 202.)

State prison law providing for releasing prisoners on parole held constitutional. (People v. Adams, 176 N. Y. 351.) (1903.)

Commissioners of the land office; of the canal fund; canal board.— § 5. The Lieutenant-Governor, Speaker

of the Assembly, Secretary of State, Comptroller, Treasurer, Attorney-General and State Engineer and Surveyor shall be the commissioners of the land office. The Lieutenant-Governor, Secretary of State, Comptroller, Treasurer and Attorney-General shall be the commissioners of the canal fund. The canal board shall consist of the commissioners of the canal fund, the State Engineer and Surveyor and the Superintendent of Public Works.

[Section 5 of article V of the amended constitution of 1846, amended by striking out the words "canal commissioners" and inserting in place thereof the words "superintendent of public works," to conform with section 3 of article V, ante.]

The legislature has the power to prescribe the powers and duties of the commissioners of the land office. (Rumsey v. N. Y. & N. E. R. R. Co., 130 N. Y. 88, 93.)

Powers and duties of boards.— § 6. The powers and duties of the respective boards, and of the several officers in this article mentioned, shall be such as now are or hereafter may be prescribed by law.

The forest, fish and game commission has power, without the consent of the attorney-general, to employ attorneys to prosecute any action to prevent injury to the forest preserve or trespass thereon and it is not the exclusive right of the attorney-general to prosecute such actions. (People v. Santa Clara Lumber Co., 55 Misc. Rep. 507.)

[Section 6 of article V of the amended constitution of 1846, without change.]

The provision of this section does not apply to officers created by the amendment of 1873 to article V, section 3. (People ex rel. Killeen v. Angle, 109 N. Y. 564. See also case cited under section 5.)

State Treasurer, suspension by Governor.— § 7. The Treasurer may be suspended from office by the Governor, during the recess of the Legislature, and until thirty

days after the commencement of the next session of the Legislature, whenever it shall appear to him that such Treasurer has, in any particular, violated his duty. The Governor shall appoint a competent person to discharge the duties of the office during such suspension of the Treasurer.

[Section 7 of article V of the amended constitution of 1846, without change.]

Certain offices abolished.— § 8. All offices for the weighing, gauging, measuring, culling or inspecting any merchandise, produce, manufacture or commodity whatever, are hereby abolished; and no such office shall hereafter be created by law; but nothing in this section contained shall abrogate any office created for the purpose of protecting the public health or the interests of the State in its property, revenue, tolls or purchases or of supplying the people with correct standards of weights and measures, or shall prevent the creation of any office for such purposes hereafter.

[Section 8 of article V of the amended constitution of 1846, without change.]

An act reorganizing the warden's office of the port of New York, and providing that certain officers shall have cognizance of all matters relating to the surveys of vessels and their cargoes, arriving in the port of New York, is not violative of this provision. (Tinkham v. Tapscott, 17 N. Y. 141.)

Civil service appointments and promotions.— § 9. Appointments and promotions in the civil service of the State, and of all the civil divisions thereof, including

cities and villages, shall be made according to merit and fitness to be ascertained, so far as practicable, by examinations, which, so far as practicable, shall be competitive; provided, however, that honorably discharged soldiers and sailors from the army and navy of the United States in the late civil war, who are citizens and residents of this State, shall be entitled to preference in appointment and promotion without regard to their standing on any list from which such appointment or promotion may be made. Laws shall be made to provide for the enforcement of this section.

[New.]

[The following article is a substitute for article VI of the amended constitution of 1846, and the notes at the end of the following sections will only refer to similar provisions in the sections of such article.]

A person appointed in the civil service without compliance with the terms of the law cannot compel payment of his salary by the comptroller. (People ex rel. McClelland v. Roberts, 148 N. Y. 360.) (1896.)

This section is mandatory as to provision requiring appointments to be made according to merit and fitness, but as to the machinery necessary for the conducting of a competitive examination, its execution to that extent is dependent upon the statute. (Crittenden v. Wurster, 152 N. Y. 345.) (1897.)

Competitive examination is not practicable for positions of a confidential relation to the appointing officer. (Id.)

Until the statute has provided the necessary machinery the amendment as to counties, towns and villages, remains uneffectual. (Id.)

This clause did not repeal or suspend existing statutes and rules. (People ex rel. Sweet v. Lyman, 157 N. Y. 368.) (1898.)

A veteran has no preference so far as exemption from ex-

amination is concerned, but examination having been had a veteran is entitled to preference without regard to his standing on the fitness and merit list. (Matter of Keymer, 148 N. Y. 219.) (1896.)

The legislature having established a method by which a classification of the offices of the city shall be provided, until such classification is made, in the absence of legislation providing for a competitive examination, the method of appointment prescribed by statute must be followed and no competitive examination is required. (People v. Keller, 35 App. Div. 493.) (1898.)

The provisions of this section absolutely require a competitive fitness examination to be made in all cases. (People ex rel. Drake v. Common Council, 26 Misc. Rep. 522.) (1899.)

The provision regulating appointments and promotions must be construed in connection with section two of article ten providing for the appointment of officers, and does not take away such power of appointment or change the officers or bodies who are to make the appointments, but relates only to the qualifications which appointees shall have to justify their appointment and the manner in which they shall be ascertained. A provision in the civil service law requiring the appointment of the person graded highest on the list is unconstitutional. (People v. Mosher, 163 N. Y. 32.) (1900.)

Provision of civil service law limiting power of removal of veterans constitutional. While the legislature cannot enact laws repugnant to this provision of the constitution it may legislate further in that direction in its discretion. (Matter of Stutzbach v. Coler, 168 N. Y. 416.)

Provisions of New York charter continuing in office as detective sergeants policemen previously appointed thereto, constitutional, since appointment was made before office was placed in competitive class. (Sugden v. Partridge, 174 N. Y. 87.) (1903.)

The permanent assignment of patrolmen of the city of New York to duty as telegraph operators, which assignment carries with it the rank and salary of a police sergeant, constitutes a promotion and cannot be made except after a civil service examination. (People ex rel. Campbell v. Partridge, 89 App. Div. 497.) (1903.)

The superintendent of out-door poor for the borough of Richmond is not a deputy of the commissioner of public charities within the meaning of the civil service law, and is entitled to the protection of the veteran exemption clause relating to discharge from office. (People ex rel. Kenney v. Folks, 89 App. Div. 171.) (1903.)

A veteran who desires to avail himself of the provisions of this section must give to the appointing power notice of the facts which entitle him to the constitutional privileges. Such a notice served after he has been dismissed is ineffectual to secure his reinstatement. (People ex rel. Dixon v. Simonson, 64 App. Div. 312.)

An honorably discharged soldier, occupying the position of superintendent of repairs of a section of the state canals to which he was appointed by the superintendent of public works, cannot be removed therefrom except "for incompetency, or misconduct shown after a hearing, upon due notice upon stated charges" (L. 1899, chap. 370, § 21). This section is not in conflict with section 3 of article V of the constitution. It was enacted in compliance with the direction of section 9 of said article. (Matter of Seeley v. Stevens, 190 N. Y. 158, revg. Matter of Seeley v. Franchot, 119 App. Div. 10.) (1907.

Appointees of the sheriff of the county of Kings whose duties relate solely to criminal matters must be appointed in accordance with civil service rules. (Matter of Flaherty v. Milliken, 193 N. Y. 564.) (1908.)

The legislature may amend or repeal the civil service law and the rules of the civil service commission provided the act does not run counter to the civil service clause in the constitution. (The People ex rel. Murphy v. Bingham, 130 App. Div. 112.)

The assignment of a roundsman in the police force of New York city to detective duty in the headquarters squad of Brooklyn borough, pursuant to section 290 of the charter, which assignment carries an increase of salary and other valuable privileges, constitutes a "promotion," within the purview of civil service provisions of the constitution. Such assignment, made subsequent to the promulgation of a rule placing that position in the schedule of competitive examinations, is invalid unless made as a result of such examination. (People ex rel. Gilhooly v. McAdoo, 108 App. Div. 1.) (1905.)

The legislature, in recognition of the services to the state and to the nation performed by veterans, may exempt

them from removal from office except for incompetency or misconduct, shown after a hearing upon due notice upon stated charges. (People ex rel. Long v. Whitney, 143 App. Div. 17.) (1911.)

ARTICLE VI.

Supreme Court; how constituted; judicial districts.—Section 1. The Supreme Court is continued with general jurisdiction in law and equity, subject to such appellate jurisdiction of the Court of Appeals as now is or may be prescribed by law not inconsistent with this article. The existing judicial districts of the state are continued until changed as hereinafter provided. The Supreme Court shall consist of the Justices now in office, and of the Judges transferred thereto by the fifth section of this article, all of whom shall continue to be Justices of the Supreme Court during their respective terms, and of twelve additional justices who shall reside in and be chosen by the electors of, the several existing judicial districts, three in the first district, three in the second, and one in each of the other districts; and of their successors. The successors of said justices shall be chosen by the electors of their respective judicial districts. The Legislature may alter the judicial districts once after every enumeration under the Constitution, of the inhabitants of the State, and thereupon reapportion the Justices to be thereafter elected in the districts so altered. The Legislature may from time to time increase the number of justices in any judicial district except that the number of justices in the first and second district or in any of the districts into which the second

district may be divided, shall not be increased to exceed one justice for each eighty thousand, or fraction over forty thousand of the population thereof, as shown by the last state or federal census or enumeration, and except that the number of justices in any other district shall not be increased to exceed one justice for each sixty thousand or fraction over thirty-five thousand of the population thereof as shown by the last state or federal census or enumeration. The Legislature may erect out of the second judicial district as now constituted, another judicial district and apportion the justices in office between the districts, and provide for the election of additional justices in the new district not exceeding the limit herein provided. [Amended by vote of People, Nov. 7, 1905.]

[The number of supreme court judges is changed by this section from 46 to 76. The superior court of the city of New York, the court of common pleas for the city and county of New York, the superior court of Buffalo and the city court of Brooklyn are abolished by section 5 of this article and the judges thereof transferred to the supreme court. Sections 6 and 28 of article VI of the amended constitution of 1846 provide for the number of "justices now in office." For city courts see amended constitution of 1846, art. VI, § 12. See, also, L. 1888, chap. 329, § 3, R. S., 8th ed., 291.]

The jurisdiction of the supreme court cannot be limited by the legislature. (People ex rel. v. Nichols, 79 N. Y. 582; De Hart v. Hatch, 3 Hun, 375.) Appellate jurisdiction of the court of appeals is, however, subject to regulation by the legislature. (Butterfield v. Rudde, 58 N. Y. 489.)

Legislature cannot confer jurisdiction upon the supreme court in admiralty cases even by stipulation. (Bartlett v. Spicer, 75 N. Y. 528; Vose v. Cockroft, 44 id. 415; Brook-

man v. Hamil, 43 id. 554; Matter of Steamboat Josephine, 39 id. 19; Poole v. Kermit, 59 id. 554.)

Legislature cannot abridge or limit jurisdiction of supreme court, and acts authorizing transfer of certain actions to marine court are unconstitutional. (De Hart v. Hatch, 3 Hun, 375; Alexander v. Bennett, 60 N. Y. 204; People ex rel. v. Supervisors, 49 Hun, 476.)

Constitution does not restrict power of legislature to provide for administering both legal and equitable relief in a single suit. (Phillips v. Gorham, 17 N. Y. 270.)

Statute (§ 2122 of Code of Civ. Pro.) limiting remedy by certiorari in supreme court does not affect the constitutional provision of general jurisdiction. (People ex rel. v. Supervisors, 49 Hun, 476.)

Courts are not deprived of equity jurisdiction by section 970 of the Code of Civil Procedure, directing that certain causes be tried by a jury upon the request of either party. (Eggers v. Man. El. R. R. Co., 27 Abb. N. C. 463; Underhill v. Man. El. R. R. Co., 27 id. 478.)

An act of legislature designating place where surplus moneys arising from the sale of lands in foreclosure or petition proceedings may be deposited does not restrict general jurisdiction of courts. (Matter of Estate of Stilwell, 139 N. Y. 337.)

Section 18 of the mechanics' lien law (L. 1885, chap. 342) providing for consolidation of separate actions by the court in which first action is brought, does not deprive supreme court of jurisdiction. (Boyd v. Stewart, 30 Abb. N. C. 127.)

Acts confining the trial of certain actions to New York city are unconstitutional as limiting the jurisdiction of the supreme court. (Mussen v. Ausable Granite Wks., 63 Hun, 367; Getman v. Mayor, etc., of N. Y., 66 id. 236.)

Legislature cannot require the supreme court to perform other than judicial duties. (People ex rel. v. Waters, 4 Misc. Rep. 1.)

The provision in domestic commerce law that an action to recover a penalty may be brought within county where

shipper resides, and "if laid in such county shall not be changed for any cause violates the provision of this section," that the supreme court is continued with general jurisdiction in law and equity. (Bell v. Niewahner, 54 App. Div. 530.)

A statute designating the counties in which certain actions shall be tried does not take away the power of the court to change the place of trial for convenience of witnesses, and therefore does not deprive the supreme court of any jurisdictional powers. (Czarnowsky v. City of Rochester, 55 App. Div. 388.)

Statute requiring sales of real estate under judgment of foreclosure to be made by sheriff instead of referee constitutional. (Sproule v. Davies, 171 N. Y. 277.) (1902.)

Judicial department; appellate division, how constituted; Governor to designate justices; reporter; time and place of holding courts.— § 2. The Legislature shall divide the State into four judicial departments. The first department shall consist of the county of New York; the others shall be bounded by county lines, and be compact and equal in population as nearly as may be. Once every ten years the Legislature may alter the judicial departments, but without increasing the number thereof. There shall be an appellate division of the Supreme Court, consisting of seven justices in the first department, and of five justices in each of the other departments. In each department four shall constitute a quorum, and the concurrence of three shall be neces-

sary to a decision. No more than five justices shall sit in any case. From all the justices elected to the Supreme Court the Governor shall designate those who shall constitute the appellate division in each department; and he shall designate the presiding justice thereof, who shall act as such during his term of office, and shall be a resident of the department. The other justices shall be designated for terms of five years or the unexpired portions of their respective terms of office, if less than five years. From time to time as the terms of such designations expire, or vacancies occur, he shall make new designations. A majority of the justices so designated to sit in the appellate division, in each department shall be residents of the department. He may also make temporary designations in case of the absence or inability to act of any justice in the appellate division, or in case the presiding justice of any appellate division shall certify to him that one or more additional justices are needed for the speedy disposition of the business before it. Whenever the appellate division in any department shall be unable to dispose of its business within a reasonable time, a majority of the presiding justices of the several departments at a meeting called by the presiding justice of the department in arrears may transfer any pending appeals from such department to any other department for hearing and determination. No justice

of the appellate division shall, within the department to which he may be designated to perform the duties of an appellate justice, exercise any of the powers of a justice of the Supreme Court, other than those of a justice out of court, and those pertaining to the appellate division or to the hearing and decision of motions submitted by consent of counsel, but any such justice, when not actually engaged in performing the duties of such appellate justice in the department to which he is designated, may hold any term of the supreme court and exercise any of the powers of a justice of the supreme court in any county or judicial district in any other department of the state. From and after the last day of December, eighteen hundred and ninety-five, the appellate divisions shall have the jurisdiction now exercised by the Supreme Court at its general terms and by the general terms of the Court of Common Pleas for the city and county of New York, the Superior Court of the city of New York, the Superior Court of Buffalo and the city of Brooklyn, and such additional jurisdiction as may be conferred by the Legislature. It shall have power to appoint and remove a reporter. The justices of the appellate division in each department shall have power to fix the times and places for holding special terms therein, and to assign the justices in the departments to hold such terms; or to

make rules therefor. [Amended by vote of People, Nov. 7, 1905.]

[Amended and adopted November 7, 1899. The appellate division is a substitute for and has the jurisdiction of the former general term. See amended constitution of 1846, article VI, sections 7 and 28, and L. 1883, chap. 329, R. S., 8th ed., p. 291.]

Statute authorizing appellate division to appoint a special commissioner of jurors and to order a trial to be had by special jury is constitutional. (People v. Hall, 169 N. Y. 184.) (1902.)

Judge or justice not to sit in review; testimony in equity cases.— § 3. No Judge or Justice shall sit in the Appellate Division or in the Court of Appeals in review of a decision made by him or by any court of which he was at the time a sitting member. The testimony in equity cases shall be taken in like manner as in cases at law; and, except as herein otherwise provided, the Legislature shall have the same power to alter and regulate the jurisdiction and proceedings in law and in equity that it has heretofore exercised.

[Section 8 of article VI of the amended constitution of 1846, amended ante.]

An appeal from an order vacating an ex parte order for the examination of a person before trial may be heard before general term of which the judge who granted the original order is a member. (Phillips v. Germania Bank, 107 N. Y. 630. And see Pistor v. Hatfield, 46 id. 249.)

This section does not restrict the power of the legislature to provide for equitable and legal relief in one suit. (Phillips v. Gorham, 17 N. Y. 270.)

Court has no power in an equity case to make a compulsory order directing testimony to be taken before a referee and the cause to be brought to trial upon the pleadings and the evidence so taken. (Farmers' Nat. Bank of Malone v. Houston, 44 Hun, 567.)

The provision of the constitution prohibiting a justice from sitting in review of a decision made by him prevents such justice from sitting in review of an order which denied a motion to vacate an order made by him. (Van Arsdale v. King, 152 N. Y. 69.) (1897.)

Although a justice of the supreme court has announced his decision in an equity case before he is designated to the appellate division, he is therefore disqualified from acting further in the case by section 2 of article VI of the constitution, and cannot sign and file his decision. In such circumstances there must be a new trial. (Williamson v. Randolphe, 111 App. Div. 539.) (1906.) (Affd., 185 N. Y. 603.) (1906.)

The power of the governor to call and appoint an extraordinary term of the supreme court, under section 234, Code of Civil Procedure, is not affected by the constitutional provision (section 2 of art. VI) empowering appellate division to fix terms of court in and for each department; hence a contention that the trial court, convened by the governor for the trial of the defendant, was not organized according to the constitution and had no jurisdiction to try the defendant or to pronounce sentence against him, is untenable. (People v. Gillette, 191 N. Y. 107.) (1908.)

The provisions of section 2, article VI, of the constitution empowering justices of the appellate division to fix the times and places for holding special terms, and to assign the justices in the departments to hold such terms, is not exclusive; and the governor has power to appoint an extraordinary term of the supreme court, section 234 of the

Code of Civil Procedure authorizing the governor to appoint extraordinary terms of the supreme court, is not unconstitutional. (People v. Neff, 122 App. Div. 135.) (1907.) (Affd., 191 N. Y. 210.) (1908.)

An order of reference made at a special term by a justice, who at the time had been appointed to the appellate division, is a nullity and in violation of section 2 of article VI of the constitution. Parties cannot by consent confer jurisdiction on such justice to make such order. (Owasco Lake Cemetery v. Teller, 110 App. Div. 450.) (1906.)

Terms of office; vacancies, how filled.—§ 4. The official terms of the Justices of the Supreme Court shall be fourteen years from and including the first day of January next after their election. When a vacancy shall occur otherwise than by expiration of term in the office of Justice of the Supreme Court the same shall be filled for a full term, at the next general election, happening not less than three months after such vacancy occurs; and, until the vacancy shall be so filled, the Governor by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment, which shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[The first sentence of this section relating to length of term is in section 13 of article VI of the amended constitution of 1846. The remainder of the section is in substance the same as section 9 of article VI of the amended constitution of 1846.]

The term shall be for the full fourteen years, and no vacancy can exist longer than the term. (People ex rel. v. Potter, 47 N. Y. 375.)

The words "in session" indicate a present acting or being of the senate as a body, and the governor may appoint during a long adjournment. (People v. Fancher, 50 N. Y. 288.)

City courts abolished; judges become justices of Supreme Court; salaries; jurisdiction vested in Supreme Court.— § 5. The Superior Court of the city of New York, the Court of Common Pleas for the city and county of New York, the Superior Court of Buffalo, and the City Court of Brooklyn, are abolished from and after the first day of January, one thousand eight hundred and ninety-six, and thereupon the seals, records, papers and documents of or belonging to such courts, shall be deposited in the offices of the clerks of the several counties in which said courts now exist; and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. The Judges of said courts in office on the first day of January, one thousand eight hundred and ninety-six, shall for the remainder of the terms for which they were elected or appointed, be Justices of the Supreme Court; but they shall sit only in the counties in which they were elected or appointed. Their salaries shall be paid by the said counties respectively, and shall be the same as the salaries of the other Justices of the Supreme Court residing in the same counties. Their suc-

cessors shall be elected as Justices of the Supreme Court by the electors of the judicial districts in which they respectively reside.

The jurisdiction now exercised by the several courts hereby abolished, shall be vested in the Supreme Court. Appeals from inferior and local courts now heard in the Court of Common Pleas for the city and county of New York and the Superior Court of Buffalo, shall be heard in the Supreme Court in such manner and by such Justice or Justices as the Appellate Divisions in the respective departments which include New York and Buffalo shall direct, unless otherwise provided by the Legislature.

[This section is new. See sections 12, 13 of article VI of the amended constitution of 1864.]

Circuit Courts and Courts of Oyer and Termier abolished.— § 6. Circuit Courts and Courts of Oyer and Terminer are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All their jurisdiction shall thereupon be vested in the Supreme Court, and all actions and proceedings then pending in such courts shall be transferred to the Supreme Court for hearing and determination. Any Justice of the Supreme Court, except as otherwise provided in this article, may hold court in any county.

[This section is new.]

The abolition of the court of oyer and terminer was self-executing and an order transferring a pending indictment was necessary. (People v. Hoch, 150 N. Y. 291.) (1896.)

Court of Appeals; the Court of Appeals is continued.—§ 7. The Court of Appeals is continued. It shall consist of the Chief Judge and Associate Judges now in office, who shall hold their offices until the expiration of their respective terms, and their successors, who shall be chosen by the electors of the State. The official terms of the Chief Judge and Associate Judges shall be fourteen years from and including the first day of January next after their election. Five members of the court shall form a quorum, and the concurrence of four shall be necessary to a decision. The court shall have power to appoint and to remove its reporter, clerk and attendants. Whenever and as often as a majority of the Judges of the Court of Appeals shall certify to the Governor that said court is unable, by reason of the accumulation of causes pending therein, to hear and dispose of the same with reasonable speed, the Governor shall designate not more than four Justices of the Supreme Court to serve as Associate Judges of the Court of Appeals. The justices so designated shall be relieved from their duties as Justices of the Supreme Court and shall serve as Associate Judges of the Court of Appeals until the causes undisposed of in said court are reduced to two hundred, when they shall return to the Supreme Court. The Governor may designate Justices of the Supreme Court to fill vacancies. No

Justice shall serve as Associate Judge of the Court of Appeals except while holding the office of Justice of the Supreme Court, and no more than seven Judges shall sit in any case.

[Section 2 of article VI of the amended constitution of 1846, amended and adopted November 7, 1899.]

Vacancy in Court of Appeals, how filled.— § 8. When a vacancy shall occur otherwise than by expiration of term, in the office of Chief or Associate Judge of the Court of Appeals, the same shall be filled, for a full term, at the next general election happening not less than three months after such vacancy occurs; and until the vacancy shall be so filled, the Governor, by and with the advice and consent of the Senate, if the Senate shall be in session, or if not in session the Governor, may fill such vacancy by appointment. If any such appointment of Chief Judge shall be made from among the Associate Judges, a temporary appointment of Associate Judge shall be made in like manner; but in such case, the person appointed Chief Judge shall not be deemed to vacate his office of Associate Judge any longer than until the expiration of his appointment as Chief Judge. The powers and jurisdiction of the court shall not be suspended for want of appointment or election, when the number of Judges is sufficient to constitute

a quorum. All appointments under this section shall continue until and including the last day of December next after the election at which the vacancy shall be filled.

[Section 3 of article VI of the amended constitution of 1846, amended by a change in language.]

Jurisdiction of Court of Appeals.— § 9. After the last day of December, one thousand eight hundred and ninety-five, the jurisdiction of the Court of Appeals, except where the judgment is of death, shall be limited to the review of questions of law. No unanimous decision of the Appellate Division of the Supreme Court that there is evidence supporting or tending to sustain a finding of fact or a verdict not directed by the court, shall be reviewed by the Court of Appeals. Except where the judgment is of death, appeals may be taken, as of right, to said court only from judgments or orders entered upon decisions of the Appellate Division of the Supreme Court, finally determining actions or special proceedings, and from orders granting new trials on exceptions, where the appellants stipulate that upon affirmance judgment absolute shall be rendered against them. The Appellate Division in any department may, however, allow an appeal upon any question of law which, in its opinion, ought to be reviewed by the Court of Appeals.

The Legislature may further restrict the jurisdiction of the Court of Appeals and the right of appeal thereto, but the right to appeal shall not depend upon the amount involved.

The provisions of this section shall not apply to orders

made or judgments rendered by any General Term before the last day of December, one thousand eight hundred and ninety-five, but appeals therefrom may be taken under existing provisions of law.

[This section is mostly new.]

It was the intent of this section to establish a constitutional right of appeal to the court of appeals from every final judgment or order made by the appellate division, and place it beyond the power of the legislature to abridge such right or take it away, but the legislature has power to further restrict such right within the limitations prescribed by the constitution and to deny the right of appeal to the court of appeals in any class of actions in its discretion, the only restriction upon the legislative power being that the right shall not be made to depend upon the amount involved. (Sciolina v. Erie Preserving Co., 151 N. Y. 50.) (1896.)

Under this section the legislature may further restrict the jurisdiction of the court of appeals, and L. 1896, chap. 559, taking away the right to appeal from unanimous judgments of affirmance in action for personal injury is constitutional. (Croveno v. Atlantic Avenue R. R. Co., 150 N. Y. 225.) (1896.)

The right to appeal is not a constitutional right. Where it does exist it is simply the continuance of an existing practice by the constitution subject to the legislative right to curtail or abolish which is founded on some statute. (People v. Rutherford, 47 App. Div. 209.) (1904.)

The provisions of this section that the legislature may further restrict the jurisdiction of the court of appeals, does not prevent it from extending such jurisdiction. (People ex rel. Com'rs of Public Charities v. Cullen, 153 N. Y. 629.) (1897.)

The provision of this section that no unanimous decision of the appellate division, that there is evidence supporting or tending to sustain a finding of fact shall be reviewed by the court of appeals, applies to a special proceeding commenced by writ of certiorari. (People ex rel. Manhattan R. R. Co. v. Barker, 152 N. Y. 417.) (1897.)

An order of reversal based upon an exception filed to the decision of the trial court and awarding a new trial, grants a new trial "on exceptions" within this section and is reviewable by the court of appeals. (Otten v. Manhattan Ry. Co., 150 N. Y. 395.) (1896.)

Judges not to hold any other office.— § 10. The Judges of the Court of Appeals and the Justices of the Supreme Court shall not hold any other office or public trust. All votes for any of them, for any other than a judicial office, given by the Legislature or the people, shall be void.

[Section 10 of article VI of the amended constitution of 1846, without change.]

Power conferred upon the supreme court to appoint commissioners of estimate and assessment is not unconstitutional as conferring another office of public trust. (Striker v. Kelly, 7 Hill, 9. And see Embury v. Connor, 3 N. Y. 511.)

Nor is the duty of designating a journal for the publication of judicial notices. (Printing Co. v. Mayor, etc., of N. Y., 52 Hun, 542.)

The term "office or public trust" refers to a permanent public trust or employment to be exercised generally. (Matter of Hathaway, 71 N. Y. 238.)

Act of 1858, allowing assessments in city of New York to be set aside by the supreme court for fraud or irregularity, is not unconstitutional as conferring new office or trust on justices of the supreme court. (Matter of Geekman, 19 How. Pr. 518.)

This section does not apply to a case where a judge and two others were appointed by the legislature as appraisers to fix the value of relics bought by the State. (People ex rel. v. Nichols, 52 N. Y. 478.)

The anti-trust law, conferring upon a judge administrative and non-judicial functions, held unconstitutional. (Matter of Attorney-General, 21 Misc. Rep. 101 (1897); affirmed, 22 App. Div. 285, but not on constitutional grounds.)

An act constituting the justices of the supreme court resident in the county of Erie a special tribunal to try police commissioners upon charges of misconduct in office is unconstitutional. (Matter of Rupp, 28 Misc. Rep. 703.) (1899.)

The anti-monopoly act does not impose non-judicial duties upon judicial officers. The duties are judicial in character because they are incident to a judicial proceeding. They are judicial in form because the justice must decide whether the application makes out a case sufficient to warrant the granting of an order under the statute. The purpose is judicial because its object is to secure testimony to be used in judicial proceedings. While the performance of administrative duties cannot be imposed by the legislature upon the supreme court, yet it can impose upon the justices of that court authority out of term to perform a variety of functions administrative or semi-administrative in character. (Matter of Davies, 168 N. Y. 89.) (1901.)

Chapter 493, Laws of 1892, relating to the construction of highways running through two or more towns of the same county, held constitutional on the ground that the duties imposed by the supreme court were judicial and not administrative. (Citizens' Savings Bank v. Town of Greenburgh, 173 N. Y. 215.) (1903.)

Removal of judges.— § 11. Judges of the Court of Appeals and Justices of the Supreme Court may be removed by concurrent resolution of both houses of the Legislature, if two-thirds of all the members elected to each house concur therein. All other judicial officers, except justices of the peace and judges or justices of inferior courts not of record, may be removed by the Senate, on the recommendation of the Governor, if two-thirds of all the members elected to the Senate concur therein. But no officer shall be removed by virtue of this section except for cause, which shall be entered on the journals, nor unless he shall have been served with a statement

of the cause alleged, and shall have had an opportunity to be heard. On the question of removal, the yeas and nays shall be entered on the journal.

[Section 11 of article VI of the amended constitution of 1846 amended.]

Compensation; age restriction; assignment by Governor.— § 12. No person shall hold the office of judge or justice of any court longer than until and including the last day of December next after he shall be seventy years of age. Each justice of the Supreme Court shall receive from the State the sum of ten thousand dollars per year. Those assigned to appellate divisions in the third and fourth departments shall each receive in addition the sum of two thousand dollars, and the presiding justices thereof the sum of two thousand five hundred dollars per year. Those justices elected in the first and second judicial departments shall continue to receive from their respective cities, counties or districts, as now provided by law, such additional compensation as will make their aggregate compensation what they are now receiving. Those justices elected in any judicial department other than the first or second, and assigned to the appellate divisions of the first or second departments shall, while so assigned, receive from those departments respectively, as now provided by law, such additional sum as is paid to the justices of those departments. A justice elected in the third or fourth department assigned by the Appellate Division or designated by the Governor to hold a trial or special term in a judicial district other than that in which he is elected shall receive in addition ten dollars per day for expenses while actually so engaged in holding such term, which shall be paid by the State and charged upon the judicial district

where the service is rendered. The compensation herein provided shall be in lieu of and shall exclude all other compensation and allowance to said justices for expenses of every kind and nature whatsoever. The provisions of this section shall apply to the judges and justices now in office and to those hereafter elected. [As amended and adopted Nov. 2, 1909.]

[The first sentence of this section is the first sentence of section 14 of article VI of the amended constitution of 1846 with amendment. The sentence relating to age limitation is a re-enactment of the same provision contained in section 13 of article 6 of the amended constitution of 1846. The provisions relating to compensation and assignment to duty in the supreme court after the expiration of the age limitation are new.]

Age limitation does not apply to justices of the peace. (Dehring v. People, 2 T. & C. 458; People v. Mann, 97 N. Y. 530.)

Ten years' service need not have been rendered during the term abridged to entitle justice to compensation after expiration. (People ex rel. Gilbert v. Wemple, 125 N. Y. 485.)

Retired justice of supreme court is entitled to $1,200 per annum, given by act of legislature for official expenses. (People ex rel. v. Wemple, 115 N. Y. 302.)

Trial of impeachments.— § 13. The Assembly shall have the power of impeachment, by a vote of a majority of all the members elected. The court for the trial of impeachments shall be composed of the President of the Senate, the Senators or the major part of them, and the Judges of the Court of Appeals, or the maior part of them. On the trial of an impeachment against the Governor, or Lieutenant-Governor, the Lieutenant-Governor shall not act as a member of the court. No judicial officer shall exercise his office, after articles of impeachment against him shall have been preferred to the Senate, until he shall

have been acquitted. Before the trial of an impeachment the members of the court shall take an oath or affirmation truly and impartially to try the impeachment according to the evidence, and no person shall be convicted without the concurrence of two-thirds of the members present. Judgment in cases of impeachment shall not extend further than to removal from office, or removal from office and disqualification to hold and enjoy any office of honor, trust or profit under this State; but the party impeached shall be liable to indictment and punishment according to law.

[Section 1 of article VI of the amended constitution of 1846 amended.]

County Courts.— § 14. The existing County Courts are continued, and the Judges thereof now in office shall hold their offices until the expiration of their respective terms. In the county of Kings there shall be two County Judges and the additional County Judge shall be chosen at the next general election held after the adoption of this article. The successors of the several County Judges shall be chosen by the electors of the counties for the term of six years. County Courts shall have the powers and jurisdiction they now possess, and also original jurisdiction in actions for the recovery of money only, where the defendants reside in the county, and in which the complaint demands judgment for a sum not exceeding two thousand dollars. The Legislature may hereafter enlarge or restrict the jurisdiction of the County Courts, provided, however, that their jurisdiction shall not be so extended as to authorize an action therein for the recovery of money only, in which the sum demanded exceeds two thousand dollars, or in which any person not a resident of the county is a defendant.

Courts of Sessions, except in the county of New York, are abolished from and after the last day of December, one thousand eight hundred and ninety-five. All the jurisdiction of the Court of Sessions in each county, except the county of New York, shall thereupon be vested in the County Court thereof, and all actions and proceedings then pending in such Courts of Sessions shall be transferred to said County Courts for hearing and determination. Every County Judge shall perform such duties as may be required by law. His salary shall be established by law, payable out of the county treasury. A County Judge of any county may hold County Courts in any other county when requested by the judge of such other county.

[Some of the provisions of this section are taken from section 15 of article VI of the amended constitution of 1846. The jurisdiction is changed so that the limit is now two thousand dollars instead of one thousand, and courts of sessions are abolished and their jurisdiction conferred upon the county courts.]

Legislature cannot authorize board of supervisors to fix salary of county judge or surrogate. (Healy v. Dudly, 5 Lans. 115.)

When the county judge is surrogate an administrator's bond made to run to the county judge is correct. (Farley v. McConnel, 52 N. Y. 630.)

A county court may entertain an application by a village to extend a street across the tracks of a railroad where the principal place of business of the railroad company is outside of the county. (Matter of Folts Street, 18 App. Div. 568.) (1897.)

A county court has jurisdiction to entertain an action brought upon a judgment of a justice of the peace of the county and rendered against a resident thereof. (Fink v. Shoemaker, 33 Misc. Rep. 687.)

The limitation upon the jurisdiction of the county court to actions in which the complaint demands judgment for a sum not exceeding $2,000 is based wholly on the demand of the complaint, and after having acquired jurisdiction of the cause of action it has power to try to render any judgment upon any counter-claims irrespective of the amount that the defendant may plead in his answer to the cause of action stated in the complaint. (Howard Iron Works v. Buffalo Elevating Co., 176 N. Y. 1.) (1903.)

The county court has no jurisdiction unless the defendant is a resident of the county. Consent of the parties will not confer jurisdiction. (People v. Bailey, 136 App. Div. 130.) (1910.)

Surrogates' Court; Surrogates, their powers and jurisdiction; vacancies.— § 15. The existing Surrogates' Courts are continued, and the Surrogates now in office shall hold their offices until the expiration of their terms. Their successors shall be chosen by the electors of their respective counties, and their terms of office shall be six years, except in the county of New York, where they shall continue to be fourteen years. Surrogates and Surrogates' Courts shall have the jurisdiction and powers which the Surrogates and existing Surrogates' Courts now possess, until otherwise provided by the Legislature. The County Judge shall be Surrogate of his county, except where a separate Surrogate has been or shall be elected. In counties having a population exceeding forty thousand, wherein there is no separate Surrogate, the Legislature may provide for the election of a separate officer to be Surrogate, whose term of office shall be six years. When the Surrogate shall be elected as a separate officer his salary shall be established by law, payable out of the county treasury. No County Judge or Surrogate shall hold office longer

than until and including the last day of December next after he shall be seventy years of age. Vacancies occurring in the office of County Judge or Surrogate shall be filled in the same manner as like vacancies occurring in the Supreme Court. The compensation of any County Judge or Surrogate shall not be increased or diminished during his term of office. For the relief of Surrogates' Courts the Legislature may confer upon the Supreme Court in any county having a population exceeding four hundred thousand, the powers and jurisdiction of Surrogates, with authority to try issues of fact by jury in probate cases.

[Some of the provisions of this section are contained in section 15 of article VI of the amended constitution of 1846.]

Collateral inheritance tax law confers no power upon surrogate prohibited by the constitution. (Matter of McPherson, 104 N. Y. 306.)

General equitable powers of a court of equity have not been conferred upon surrogates' courts, and no authority exists in those courts to exercise those powers. Nor does the constitutional provision confer on the legislature authority to add such powers to the jurisdiction of surrogates' courts. (Matter of Bunting, 98 App. Div. 122.) (1904.)

Local judicial officers.— § 16. The Legislature may, on application of the board of supervisors, provide for the election of local officers, not to exceed two in any county, to discharge the duties of County Judge and of Surrogate, in cases of their inability or of a vacancy, and in such other cases as may be provided by law, and to exercise such other powers in special cases as are or may be provided by law.

[Section 16 of article VI of the amended constitution of 1846, amended.]

Under this section the legislature has power to authorize a special county judge to take a recognizance. (People v. Main, 20 N. Y. 434. And see for a general discussion of this section, People ex rel. v. Townsend, 102 id. 430.)

Justices of the peace; district court justices.— § 17. The electors of the several towns shall, at their annual town meetings, or at such other time and in such manner as the Legislature may direct, elect Justices of the Peace, whose term of office shall be four years. In case of an election to fill a vacancy occurring before the expiration of the full term, they shall hold for the residue of the unexpired term. Their number and classification may be regulated by law. Justices of the Peace and judges or justices of inferior courts not of record, and their clerks may be removed for cause, after due notice and an opportunity of being heard by such courts as are or may be prescribed by law. Justices of the Peace and District Court Justices may be elected in the different cities of this State in such manner, and with such powers, and for such terms, respectively, as are or shall be prescribed by law; all other judicial officers in cities, whose election or appointment is not otherwise provided for in this article, shall be chosen by the electors of such cities, or appointed by some local authorities thereof.

[Section 18 of article VI of the amended constitution of 1846, amended.]

This section does not apply to police justices in New York city, and they may be appointed. (Wenzler v. People, 58 N. Y. 516; People v. Morgan, 5 Daly, 161; affirmed, 58 N. Y. 679.) And the legislature may abolish or abridge the tenure of office of a police justice. (Coulter v. Murray, 15 Abb. [N. S.] 129.)

Legislature cannot provide for election of justices of the peace in any other manner or by any other locality than is prescribed in constitution. (Geraty v. Reid, 78 N. Y. 64.)

This section does not prevent annexing towns to cities, and in effect ending the term of a justice of the peace. (Gertum v. Supervisors of Kings, 109 N. Y. 170.)

An act of legislature extending the term of a district court judge is unconstitutional. (People ex rel. v. Bull, 46 N. Y. 57.)

Legislature may confer powers of justices of the peace of towns upon justices in cities. (Ostrander v. People, 29 Hun, 513.)

A justice of the peace in a town is a constitutional officer whose office cannot be abolished, directly or indirectly. (People ex rel. Burby v. Howland, 155 N. Y. 270.) (1898.)

The criminal jurisdiction of a justice of the peace may be limited as to a village, and the provision of the general village law conferring upon police justices exclusive jurisdiction of misdemeanors in the village, is constitutional. (People ex rel. Saloom v. Whitney, 32 App. Div. 144.) (1898.)

(See also People ex rel. Ryan v. Supervisors, 155 N. Y. 295.) (1898.)

The term of office of a justice of the peace cannot be abridged. (People v. Tracey, 46 App. Div. 216.) (1899.)

The legislature has power to adopt but one method of selecting such judicial officers, either by election or appointment. It cannot direct the use of both methods in the same city by enacting that they shall be elected in one portion thereof and appointed in the other. Such officers if elected must be chosen by all the electors of the city (People v. Dooley, 171 N. Y. 74.) (1902.) (People ex rel. Joyce v. Guden, 75 N. Y. Supp. 347.)

Recorders and city judges in cities are not provided for in the constitution and their terms of office are within the control of the legislature. (People ex rel. Stupp v. Kemp, 83 App. Div. 554.) (1903.)

A justice of the peace has jurisdiction of an action where the defendant was within the town at the time of the commencement of the action, although neither the plaintiff nor defendant is a resident of the state. (Drew v. Cass, 129 App. Div. 453.) (1908.)

The office of justice of the peace in towns is a constitutional office, while the office of justice of the peace in a city or village is created by the legislature and may be abolished by like act. (Reid v. Stevens, 70 Misc. Rep. 177.) (1910.)

Inferior local courts.— § 18. Inferior local courts of civil and criminal jurisdiction may be established by the Legislature, but no inferior local court hereafter created shall be a court of record. The Legislature shall not hereafter confer upon any inferior or local court of its creation, any equity jurisdiction or any greater jurisdiction in other respects than is conferred upon County Courts by or under this article. Except as herein otherwise provided, all judicial officers shall be elected or appointed at such times and in such manner as the Legislature may direct.

[Section 19 of article VI of the amended constitution of 1846, amended. The provisions that no such courts shall be courts of record or possess equity jurisdiction are new.]

An act establishing within a village a court with inferior and local jurisdiction, although he be named a justice of the peace and is given similar powers, is valid. (People ex rel. v. Terry, 108 N. Y. 1; Bocock v. Cochran, 32 Hun, 521.)

Act creating office of police justice in village is not void as giving too broad territorial jurisdiction. (Village of Deposit v. Vail, 5 Hun, 310.)

Legislature has power to confer upon a local inferior court, whatever civil or criminal jurisdiction it deems best,

subject to constitutional restriction. (Anderson v. Reilly, 66 N. Y. 189.)

This section does not authorize the legislature to provide a district for judicial purposes not bounded by town, county, village or city lines. (People ex rel. v. Porter, 90 N. Y. 68.)

Jurisdiction is limited to localities for which such courts were established. (Rockwell v. Raymond, 5 N. Y. Supp. 642.) Legislature may prescribe the jurisdiction. (Connors v. Hilton, 66 How. Pr. 144.)

Act giving exclusive jurisdiction to courts of special sessions is valid. Jurisdiction is not exclusive unless specified. (People v. Austin, 49 Hun, 396.)

Justices of the peace in Rochester possessing no criminal jurisdiction are inferior local courts and may be abolished. (People ex rel. v. Common Council of Rochester, 11 Hun, 241.) (As to municipal court of Syracuse, see Curtin v. Barton, 139 N. Y. 505.)

The only limitation upon the jurisdiction of new magistrates created under this provision is that it be local and inferior. (Brandon v. Avery, 22 N. Y. 469.)

The jurisdiction of a local court must be exercised within the locality, and its process cannot be executed outside of it. (Geraty v. Reid, 78 N. Y. 65; Hoag v. Lamont, 60 id. 96; Connor v. Hilton, 66 How. Pr. 144.)

An act authorizing the city court of Mount Vernon to authorize the service of its summons outside of the city, held unconstitutional. (Pierson v. Fries, 3 App. Div. 418.) (1896.)

The jurisdiction of a local court cannot be extended by legislation so as to authorize service of process without its territorial limits.) (Baird v. Helfer, 12 App. Div. 23.) (1896.) (Ziegler v. Corwin, 12 App. Div. 60.) (1897.)

(See Armstrong v. Kennedy, 23 Misc. Rep. 47.) (1898.)

Although several of the above decisions hold that process of a local court cannot be served without the municipality. they were rendered under the language of section 19 of arti-

cle 6 of the old constitution, which was much narrower than the language of the above section. It is believed that the section was expressly amended to obviate the effect of these decisions, and that under this section process of a local court may, if authorized by the legislature, be served anywhere in the county.

The act creating the municipal court of the city of New York is not unconstitutional because it extends the jurisdiction of that court over more than one county. It was not the intention to restrict the territorial jurisdiction of inferior local courts to that of county courts but rather to restrict their jurisdiction as to subject-matter and persons and not as to locality. (Irwin v. Met. St. R. R. Co., 38 App. Div. 253.) (1899.)

The limitation imposed upon the power of the legislature to confer jurisdiction upon future inferior local courts relates to the jurisdiction as to subject-matter and not as to territory, nonresident parties defendant or foreign corporations. The municipal court of the city of New York is a continuation and consolidation and reorganization of the district courts of the old city of New York and is not a new inferior local court. (Worthington v. London Guarantee Co., 164 N. Y. 81.)

The conferring of jurisdiction upon the municipal court of the city of New York to entertain actions in which the defendant is a corporation though it does not appear that its legal residence is within the county is not unconstitutional, such jurisdiction having long been exercised by justices of the peace. (Dodge Mfg. Co. v. Nassau Show Case Co., 44 App. Div. 603.) (1899.) (Kantro v. Armstrong, 44 App. Div. 506.) (1899.)

Act appointing commissioners to audit certain outstanding claims against the city of Syracuse does not violate this section. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

The legislature has power to confer jurisdiction upon the municipal court of the city of New York in actions for the

recovery of money only against nonresident natural persons having a place of business in the city. (Routenberg v. Schweitzer, 165 N. Y. 175.) (1900.)

Subdivision 7 of section 12 of the municipal court act, chap. 598, L. 1904, which provides for the rotation of the justices in holding court in districts other than that in which they were elected, is constitutional. (Sakolski v. Schenkel, 50 Misc. Rep. 151.) (1906.)

A justice of the city court of the city of New York has jurisdiction to entertain supplementary proceedings upon a municipal court judgment docketed in the county clerk's office. (Hottenroth v. Flaherty, 61 Misc. Rep. 108.) (1908.)

The city court of Binghamton has no jurisdiction over the person of defendant served with the summons outside of the city of Binghamton. (Darling v. White, 67 Misc. Rep. 366.) (1910.)

Chapter 31, Laws of 1861, giving the police justice of the town of Saugerties excessive criminal jurisdiction, is unconstitutional. (People ex rel. Slade v. Boice, 63 Misc. Rep. 357.) (1909.)

The city court of New York is not a constitutional court. It has jurisdiction of an action brought by a nonresident plaintiff against a foreign corporation. (Kline v. The Imperial Coal & Coke Co., 66 Misc. Rep. 616.) (1910.)

Clerks of courts.— § 19. Clerks of the several counties shall be clerks of the Supreme Court, with such powers and duties as shall be prescribed by law. The Justices of the Appellate Division in each department shall have power to appoint and to remove a clerk, who shall keep his office at a place to be designated by said Justices. The Clerk of the Court of Appeals shall keep his office at the seat of government. The Clerk of the Court of Appeals and the Clerks of the Appellate Division shall

receive compensation to be established by law and paid out of the public treasury.

[Section 20 of article VI of the amended constitution of 1846, amended. The clerk of appellate division is a new office.]

No judicial officer, except justice of the peace, to receive fees; not to act as attorney or counselor.— § 20. No judicial officer, except Justices of the Peace, shall receive to his own use any fees or perquisites of office; nor shall any Judge of the Court of Appeals, or Justice of the Supreme Court, or any County Judge or Surrogate hereafter elected in a county having a population exceeding one hundred and twenty thousand, practice as an attorney or counselor in any court of record of this State, or act as referee. The Legislature may impose a similar prohibition upon County Judges and Surrogates in other counties. No one shall be eligible to the office of Judge of the Court of Appeals, Justice of the Supreme Court, or, except in the county of Hamilton, to the office of County Judge or Surrogate, who is not an attorney and counselor of this State.

[This section contains the provisions of section 21 of article VI of the amended constitution of 1846. The remainder of the section is new.]

The objection that a referee was disqualified because at the time of his appointment he was a county judge of a county having more than 120,000 inhabitants based upon judicial notice alone is determined by the records of the last official enumeration of the inhabitants of the state. (Adams v. Elwood, 176 N. Y. 106.) (1903.)

The appellate division has not jurisdiction to suspend from practice or remove from his office at attorney a surrogate who practices law during his term of office in violation of this section. (Matter of Silkman, 88 App. Div. 102.) (1903.)

Publication of statutes.— § 21. The Legislature shall provide for the speedy publication of all statutes, and shall regulate the reporting of the decisions of the courts; but all laws and judicial decisions shall be free for publication by any person.

[Section 23 of article VI of the amended constitution of 1846, amended.]

Terms of office of present justices of the peace and local judicial officers.— § 22. Justices of the Peace and other local judicial officers provided for in sections seventeen and eighteen, in office when this article takes effect, shall hold their offices until the expiration of their respective terms.

[Section 25 of article VI of the amended constitution of 1846, amended.]

Abolition of office of police justice in New York city, held not in violation of this section. (Koch v. Mayor, 152 N. Y. 72.) (1897.) (Stenson v. Koch, 152 N. Y. 87; Matter of Quinn, 162 N. Y. 89.)

Courts of special sessions.— § 23. Courts of Special Sessions shall have such jurisdiction of offenses of the grade of misdemeanors as may be prescribed by law.

[Section 26 of article VI of the amended constitution of 1846, without change.]

Section is not limited to offenses of the grade specified created by statute after the adoption of such section. (People ex rel. v. Dutcher, 83 N. Y. 240.)

The legislature in creating the court of special sessions in the city of New York and providing for the appointment of justices thereto had constitutional authority to prescribe the qualifications of such justices, and to regulate their proceedings while in office. In forbidding such justices from holding "any other public office, or carrying on any business, or practice as an attorney or counsellor-at-law in any court of the state, or act as referee," etc., the legislature did not invade any of their constitutional rights and privileges. (Matter of Denell, 112 App. Div. 99.) (1906.)

ARTICLE VII.

State credit not to be given.— Section 1. The credit of the State shall not in any manner be given or loaned to or in aid of any individual, association or corporation.

[Section 9 of article VII of the amended constitution of 1846, without change.]

The legislature may require insurance companies to deposit a fund with the state insurance department. (Attorney-General v. North Am. Life Ins. Co., 82 N. Y. 172.)

Railroad grade crossing act does not violate this section. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

State debts, power to contract.— § 2. The State may, to meet casual deficits or failures in revenues, or for expenses not provided for, contract debts; but such debts, direct or contingent, singly or in the aggregate, shall not at any time exceed one million of dollars; and the moneys arising from the loans creating such debts shall be applied to the purpose for which they were ob-

tained, or to repay the debt so contracted, and to no other purpose whatever.

[Section 10 of article VII of the amended constitution of 1846, without change.]

Neither the legislature or any state department can create a debt or incur an obligation for or in behalf of the state, except as to the amount and in the manner provided by the constitution. (People ex rel. v. Supervisors of Kings Co., 52 N. Y. 556, 563.)

State debts to repel invasions.— § 3. In addition to the above limited power to contract debts, the State may contract debts to repel invasion, suppress insurrection, or defend the State in war; but the money arising from the contracting of such debts shall be applied to the purpose for which it was raised, or to repay such debts, and to no other purpose whatever.

[Section 11 of article VII of the amended constitution of 1846, without change.]

Limitation of legislative power to create debts.— § 4. Except the debts specified in sections two and three of this article, no debts shall be hereafter contracted by or in behalf of this State, unless such debt shall be authorized by law, for some single work or object, to be distinctly specified therein; and such law shall impose and provide for the collection of a direct annual tax to pay, and sufficient to pay, the interest on such debt as it falls due, and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof. No such law shall take effect until it shall, at a general election, have been submitted to the people, and have received a majority of all the votes cast for and against it at such election. On the final passage of such bill in either house of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof, and shall be: "Shall this bill pass, and ought the same to

receive the sanction of the people?" The Legislature may at any time after the approval of such law by the people, if no debt shall have been contracted in pursuance thereof, repeal the same; and may at any time, by law, forbid the contracting of any further debt or liability under such law; but the tax imposed by such act, in proportion to the debt and liability which may have been contracted in pursuance of such law, shall remain in force and be irrepealable, and be annually collected, until the proceeds thereof shall have made the provision hereinbefore specified to pay and discharge the interest and principal of such debt and liability. The money arising from any loan or stock creating such debt or liability shall be applied to the work or object specified in the act authorizing such debt or liability, or for the payment of such debt or liability, and for no other purpose whatever. No such law shall be submitted to be voted on within three months after its passage or at any general election when any other law, or any bill shall be submitted to be voted for or against. The Legislature may provide for the issue of bonds of the State to run for a period not exceeding fifty years in lieu of bonds heretofore authorized but not issued and shall impose and provide for the collection of a direct annual tax for the payment of the same as hereinbefore required. When any sinking fund created under this section shall equal in amount the debt for which it was created, no further direct tax shall be levied on account of said sinking fund, and the Legislature shall reduce the tax to an amount equal to the accruing interest on such debt. The Legislature may from time to time alter the rate of interest to be paid upon any State debt, which has been or may be authorized pursuant to the provisions of this section, or upon any part of such debt, provided, however, that the rate of interest shall not be altered upon any part of such debt or upon any bond

or other evidence thereof, which has been, or shall be created or issued before such alteration. In case the Legislature increase the rate of interest upon any such debt, or part thereof, it shall impose and provide for the collection of a direct annual tax to pay and sufficient to pay the increased or altered interest on such debt as it falls due and also to pay and discharge the principal of such debt within fifty years from the time of the contracting thereof, and shall appropriate annually to the sinking fund moneys in amount sufficient to pay such interest and pay and discharge the principal of such debt when it shall become due and payable. [Amended by vote of People Nov. 7, 1905, and Nov. 2, 1909.]

[Section 2 of article VII of the amended constitution of 1846, amended by striking the words "the tenth and eleventh sections" and inserting the words "sections two and three."]

The canal law of 1851 authorizing the raising of a loan to the state on certificates pledging the canal revenues for payment of principal and interest and excluding in terms any other liability on the part of the state than that contained in the statute, with the provision that the state shall not be liable, in any event, to make up any deficiency in the revenues, or to redeem the certificates, construed to create a debt or liability of the state, if the certificates should in no event or contingency be paid is repugnant to this section. (People v. Newell, 7 N. Y. 9.)

The act of 1872, chapter 700, authorizing, subject to the approval of the people at the next general election, the creation of a debt for purposes therein named, violates this section in providing for the creation of a debt for many different objects. (People ex rel. Hopkins v. Board of Supervisors of Kings Co., 52 N. Y. 556.)

This section only relates to state finances and taxes, and not to taxes for municipal improvements. (People ex rel. v. Havemeyer, 3 Hun, 97; People v. Supervisors of Chenango, 8 N. Y. 317; Darlington v. Mayor of N. Y., 31 id. 164.) And, therefore, the legislature may direct the issue of town bonds to defray the expense of constructing highways therein without the consent of the inhabitants of such town. (People ex rel. v. Flagg, 46 id. 401.)

Sinking fund, how kept and invested.— § 5. The sinking funds provided for the payment of interest and the extinguishment of the principal of the debts of the State shall be separately kept and safely invested, and neither of them shall be appropriated or used in any manner other than for the specific purpose for which it shall have been provided.

[Section 13 of article VII of the amended constitution of 1846, without change.]

Claims barred by statute of limitations.— § 6. Neither the Legislature, canal board, nor any person or persons acting in behalf of the State, shall audit, allow or pay any claim which, as between citizens of the State, would be barred by lapse of time. This provision shall not be construed to repeal any statute fixing the time within which claims shall be presented or allowed, nor shall it extend to any claim duly presented within the time allowed by law, and prosecuted with due diligence from the time of such presentment. But if the claimant shall be under legal disability, the claim may be presented within two years after such disability is removed.

[Section 14 of article VII of the amended constitution of 1846, amended by striking out certain provisions probably deemed obsolete.]

Under this section it is not necessary to avoid the limitations to show that presentation has been made to the board of audit or its successor, the board of claims. Presentment to the legislature or to any officer or body having jurisdiction to pay, allow or act upon the claim is sufficient, if after such presentation the same has been prosecuted with reasonable diligence. (Corkings v. State, 99 N. Y. 491.)

This does not apply to a claim for services and materials furnished state officers, which is not enforceable in any tribunal until it receives recognition from the legislature, and the limitation does not begin to run until the enabling act has been passed. (O'Hara v. State of N. Y., 112 N. Y. 146.)

Where a meritorious claim against the state was barred at the time of its submission to the board of claims by the intervention of the general statute of limitations, the legislature cannot confer power upon the board of claims to allow or pass upon such claim. (Gates v. State, 128 N. Y. 221.)

The legislature has the right to enlarge the time in which a claim in any particular case may be filed, provided it does not itself audit or permit any other body to audit or allow a claim which, as between citizens, is outlawed. (Parmenter v. State, 135 N. Y. 134, citing Cole v. State, 102 id. 48, 53.)

Such limitation can only be said to run against the claimant during the time which he would have been authorized to present his claim before some tribunal qualified to hear and determine his claim by an act of the legislature. (Parmenter v. State, 135 N. Y. 154.)

This section only applies to a case where a tribunal has been constituted by the legislature to hear and determine the claim in controversy, and the limitation only commences to run from that date. (Supervisors of Cayuga Co. v. State, 153 N. Y. 279.) (1897.)

Section considered. (Coxe v. State, 144 N. Y. 396.) (1895.)

The legislature has no power to extend the statute of limitations in respect to its running against a claim against the state. (Bissell v. State, 70 App. Div. 238.) (1902.)

Statute authorizing comptroller to audit claim of county of Essex for excessive taxes paid unconstitutional as to claim barred by statute of limitations. (People v. Miller, 85 App. Div. 145.) (1903.) (Affd., 181 N. Y. 439.) (1905.)

A special act of the legislature which allows the court of claims to determine the claim of a city against the state for taxes on state lands, and provides that an award shall be made "notwithstanding the lapse of time since the accruing of such claim" is against section 6 of article VII of the constitution. (City of Buffalo v. State of New York, 116 App. Div. 539.) (1906.)

The legislature may validate and provide for the payment of illegal private claims, if they are supported by moral

obligations and founded upon justice, without violating any constitutional privilege. (Wheeler v. State, 190 N. Y. 406.) (1907.)

Section 256 of the tax law, as amended by chapter 721, Laws of 1907, authorizing the refunding of an excessive school tax, is not unconstitutional, as imposing upon one person the debts of another; nor is said statute obnoxious to section 6 of article VII of the constitution which is aimed at the allowance of stale claims against the state. The legislature has power to authorize the refunding of an excessive tax by retroactive statute. (People ex rel. Eckerson v. Board of Education, 126 App. Div. 414.) (1908.)

Forest preserve.— § 7. The lands of the State, now owned or hereafter acquired, constituting the forest preserve as now fixed by law, shall be forever kept as wild forest lands. They shall not be leased, sold or exchanged, or be taken by any corporation, public or private, nor shall the timber thereon be sold, removed or destroyed.

Where the special condemnation proceedings prescribed by the Adirondack park act of 1897 were fully completed the land then became a part of the forest preserve, and thereupon the provisions of this section immediately applied and intervened against the private owner. The creation of the park is a part of the permanent policy of the state. The use is not restricted either by legislation or circumstances to a special locality or to a limited number of inhabitants, but is extended to all the people and constitutes a public use and purpose. (People v. Adirondack R. R. Co., 160 N. Y. 225.) (1899.)

Chapter 122, Laws of 1898, which in effect constitutes Cornell University an agent of the state for the performance of experimental and educational work in forestry, upon lands within the limits comprising the forest preserve, does not violate section 7 of article VII of the constitution. (People v. Brooklyn Cooperage Co., 187 N. Y. 142.) (1907.) (114 App. Div. 722, affd.)

Canals, not to be sold; not applied to certain canals; disposition of funds.— § 8. The Legislature shall not sell, lease or otherwise dispose of the Erie canal, the Oswego canal, the Champlain canal, the Cayuga and Seneca canal, or the Black River canal; but they shall remain the property of the State and under its management forever. The prohibition of lease, sale or other disposition herein contained, shall not apply to the canal known as the Main and Hamburg street canal, situated in the city of Buffalo, and which extends easterly from the westerly line of Main street to the westerly line of Hamburg street. All funds that may be derived from any lease, sale or other disposition of any canal shall be applied to the improvement, superintendence or repair of the remaining portions of the canals.

[Section 6 of article VII of the amended constitution of 1846, amended.]

Under this section the legislature cannot authorize the imposition of a tax or assessment upon lands of a canal by a municipal corporation which may result in its being sold or leased. (Elwood v. City of Rochester, 43 Hun, 102.)

This section does not affect the sale of abandoned canals. (People v. Stephens, 13 Hun, 17; DeWitt v. E. T. R. Co., 134 N. Y. 495; Eldridge v. City of Binghamton, 120 id. 309, 315.)

No citizen can acquire the prescriptive right to use the waters of the canals (Burbank v. Fay, 5 Lans. 397); but the legislature may authorize the use of surplus waters of canal feeders. (Comstock v. City of Syracuse, 5 N. Y. Supp. 834; Sweet v. City of Syracuse, 129 N. Y. 316.)

Legislature has authority to authorize the filling in of the North Side Cut canal, a former adjunct of the Oswego canal, but since fallen into disuse, as a mere appurtenance thereto unnecessary to its use and not recognized as part of the

canal system nor protected by the canal law. (Lynch v. Partridge, 36 Misc. Rep. 302.) (1902.)

The barge canal law is not violative of the constitution because it provides for the sale and abandonment of a large part of the canal system of the state. (Pelo v. Stevens, 66 Misc. Rep. 35.) (1910.)

No tolls to be imposed; contracts for work and materials; no extra compensation.—§ 9. No tolls shall hereafter be imposed on persons or property transported on the canals, but all boats navigating the canals, and the owners and masters thereof, shall be subject to such laws and regulations as have been or may hereafter be enacted concerning the navigation of the canals. The Legislature shall annually, by equitable taxes, make provision for the expenses of the superintendence and repairs of the canals. All contracts for work or materials on any canal shall be made with the persons who shall offer to do or provide the same at the lowest price, with adequate security for their performance. No extra compensation shall be made to any contractor; but, if, from any unforeseen cause, the terms of any contract shall prove to be unjust and oppressive, the canal board may, upon the application of the contractor, cancel such contract.

[Section 3 of article VII of the amended constitution of 1846, amended by striking out certain obsolete provisions reading to the "canal debt sinking fund."]

A discretionary power is vested in the officers authorized to award a contract, to determine who is the "lowest bidder" and what is "adequate security." This provision should be applied according to its spirit and not literally.

(People ex rel. v. Fay, 3 Lans. 398; People v. Contracting Board, 27 N. Y. 378.)

The canal board cannot, after a contract has been awarded, increase the price of work and materials to be subsequently done or provided under such contract, even if authorized by the legislature. (People ex rel. v. Canal Board, 4 Lans. 272.)

This section secures to the state a contract at the lowest prices bid, with security for its performance and the power of enforcing it against the contractor and sureties; the power of modifying such contract, or making further allowances by way of increasing prices or otherwise, has always resided in the legislature, and the provisions of this section do not interfere therewith. (People ex rel. v. Dayton, 55 N. Y. 367.)

There is no restriction upon the legislature's relieving a contractor from the effect of a hard bargain. (People ex rel. v. Densmore, 1 Sup. Ct. [T. & C.] 280.)

The last sentence in this section was first adopted as an amendment to this section in November, 1874, and the cases here cited, relating to the additional compensation, were decided prior to the adoption thereof, and may be affected by such amendment.

The superintendent of public works may require bidders for work on the canals to make a deposit and may reject check payable to the order of the state treasurer. (People ex rel. Lord Construction Co. v. Stevens, 67 Misc. Rep. 529.) (1910.)

Canal improvement, and cost thereof.—§ 10. The canals may be improved in such manner as the Legislature shall provide by law. A debt may be authorized for that purpose in the mode prescribed by section four of this article, or the cost of such improvement may be defrayed by the appropriation of funds from the state treasury, or by equitable annual tax.

[New.]

Payment of State debts.— § 11. The Legislature may appropriate out of any funds in the treasury, moneys to pay the accruing interest and principal of any debt heretofore or hereafter created, or any part thereof and may set apart in each fiscal year, moneys in the State treasury as a sinking fund to pay the interest as it falls due and to pay and discharge the principal of any debt heretofore or hereafter created under section four of article seven of the constitution until the same shall be wholly paid, and the principal and income of such sinking fund shall be applied to the purpose for which said sinking fund is created and to no other purpose whatever; and, in the event such moneys so set part in any fiscal year be sufficient to provide such sinking fund, a direct annual tax for such year need not be imposed and collected, as required by the provisions of said section four of article seven, or of any law enacted in pursuance thereof. [Adopted by vote of People, Nov. 7, 1905.]

Improvement of highways.— § 12. A debt or debts of the state may be authorized by law for the improvement of highways. Such highways shall be determined under general laws, which shall also provide for the equitable apportionment thereof among the counties. The aggregate of the debts authorized by this section shall not at any one time exceed the sum of fifty millions of dollars. The payment of the annual interest on such debt and the creation of a sinking fund of at least two per centum per annum to discharge the principal at maturity shall be provided by general laws whose force and effect shall not be diminished during

the existence of any debt created thereunder. The Legislature may by general laws require the county or town or both to pay to the sinking fund the proportionate part of the cost of any such highway within the boundaries of such county or town and the proportionate part of the interest thereon, but no county shall at any time for any highway be required to pay more than thirty-five hundredths of the cost of such highway, and no town more than fifteen hundredths. None of the provisions of the fourth section of this article shall apply to debts for the improvement of highways hereby authorized. [Adopted by vote of People, Nov. 7, 1905.]

ARTICLE VIII.

Corporations, formation of.— Section 1. Corporations may be formed under general laws; but shall not be created by special act, except for municipal purposes, and in cases where, in the judgment of the Legislature, the objects of the corporation cannot be attained under general laws. All general laws and special acts passed pursuant to this section may be altered from time to time or repealed.

[Section 1 of article VIII of the amended constitution of 1846, without change.]

The provision of this section is permissive, not mandatory. (Matter of Taxpayers of Kingston, 40 How. Pr. 444.)

An act reorganizing an old corporation is not within this section (Mosher v. Hilton, 15 Barb. 657); nor an act remedying a technical defect in the organization (Syracuse City Bank v. Davis, 16 id. 188); nor an act regulating an existing corporation. (Attorney-General v. North Am. Life Ins. Co., 82 N. Y. 172.)

A special act for incorporation is not violative of this section by reason of the existence of a general law. Whether an act is necessary or not is in the discretion of the legislature. (People v. Bowen, 21 N. Y. 517.)

The legislature may by special act impose such conditions, restrictions and burdens upon railroad corporations as the public good requires. (People ex rel. v. Boston & Albany R. R. Co., 70 N. Y. 569.)

The legislature may pass a special act requiring a railroad corporation organized under the general railroad act to pay a tax upon gross receipts instead of a license fee as before prescribed. Such act may be deemed an amendment of the charter of the company, and so within the power reserved to the legislature by this section. (Mayor v. Twenty-third Street R. R. Co., 113 N. Y. 311.)

Under such reserved power the legislature cannot deprive a corporation of its property, or interfere with or annul its contract with hired persons. (Id., citing People v. O'Brien, 111 N. Y. 1. See People ex rel. Gage v. Lohnas, 54 Hun, 604; People v. O'Brien, 111 N. Y. 2; Booth v. R., W. & O. T. R. R. Co., 44 St. Rep. 9, 11.)

A law depriving a turnpike corporation of its right to exact toll from bicycles is unconstitutional, notwithstanding the right of the legislature to alter or amend a charter. (Rochester & C. Turnpike Road Co. v. Joel, 41 App. Div. 43.) (1899.)

Every person who becomes a member of a corporation does so with full knowledge that it may at any time be changed from a mutual to a stock corporation upon certain terms and conditions, and that those terms may at any time be changed by the legislature. (Grobe v. Erie County Insurance Co., 39 App. Div. 183.) (1899.)

The legislature has the power to alter and amend in its discretion all general laws relating to the creation of corporations. (Barnes v. Arnold, 45 App. Div. 314.) (1899.)

An act authorizing the incorporation of building exchanges and boards of trade by general law is constitutional. (Reynolds v. Plumbers' Assn., 30 Misc. Rep. 709.) (1900.)

A school district is a quasi-corporation and it is within the power of the legislature to say that such corporation

shall not appeal from the determination of the superintendent of public instruction. (People v. Skinner, 74 App. Div. 58.) (1902.)

A school district is a municipal corporation coming within the exception of this section. (Board of Education v. Board of Education, 76 App. Div. 355.) (1903.)

The general franchise of a corporation is its right to live and do business by the exercise of the corporate powers granted by the state. The grant of a franchise carries no stipulation that it shall be exempt from taxation. (People ex rel. Met. St. Ry. Co. v. Tax Comrs., 174 N. Y. 417.) (1903.)

A corporation is bound to conform to the law in existence at the time it acts and to abide the constitutional will of the legislature. (Palmer v. Hickory Grove Cemetery, 84 App. Div. 600.) (1903.)

An ordinance prohibiting posting of advertisements on private property without consent of park board unconstitutional. (People v. Green, 85 App. Div. 400.) (1903.)

A corporation is subject to the general statutes of the state in which it is organized applicable to its conduct and management as well as to the reservation of the right on the part of the legislature to alter its character by subsequent laws, and the stockholders must be recorded as consenting not only to the existing law but to such alterations as may be made. (Martin v. Remington-Martin Co., 93 App. Div. 18.) (1904.)

An educational corporation is not exempt from local taxation upon its leased real estate, the rents of which are devoted exclusively to corporate purposes, although its charter, granted by special act in 1887, expressly exempted such real estate from local taxation, said general tax law, chapter 908, Laws of 1896, § 4, exempting so much of the real estate of educational institutions as is used exclusively for carrying out thereupon one or more of the corporate purposes impliedly repeals the provisions of the special act relating to such exemption. The repeal of such exemption cannot be regarded as violating those provisions of the federal constitution prohibiting legislation impairing the

obligation of contracts, since the constitutions of 1846 and of 1894, and the revised statutes of the state, provide for the alteration or repeal of any general or special act creating a corporation, and those provisions must be read into any subsequent charter, thus preventing it from becoming irrevocable. (Pratt Institute v. City of New York, 193 N. Y. 151.) (1909.) (Affg. 99 App. Div. 525. See also People ex rel. Roosevelt Hospital v. Raymond, 126 App. Div. 720.)

Cooper Union having been incorporated by chapter 279, Laws of 1859, as a charitable educational institution exempt from taxation by the laws of its creation, was and is, nevertheless, subject to the constitutional provisions then in force (§ 1 of art. VIII of the constitution of 1846, which is also the same in the constitution of 1894), which provides that "all general laws and special acts passed pursuant to this section may be altered from time to time or repealed." And, accordingly, it was held that such corporation was subject to a recording tax upon its mortgage, under chapter 532, Laws of 1906, and an application for a peremptory writ of mandamus to compel the register of a county to record such a mortgage, without the payment of any tax, should be denied. (People ex rel. Cooper Union v. Gass, 190 N. Y. 323.) (1907.) (119 App. Div. 280, revd. See also People ex rel. Roosevelt Hospital v. Raymond 126 App. Div. 720.)

An act of the legislature amending the charter of life insurance company as to the right to enfranchise policyholders is sanctioned by the constitution of this state and not in conflict with the constitution of the United States. Lord v. Equitable Life Assurance Society, 194 N. Y. 212. (1909.) (Id. 109 App. Div. 252; affd., Bush v. N. Y. Life Ins. Co., 135 App. Div. 447.) (1910.)

As the power to amend or repeal corporate charters is reserved by the constitution to the people, the Public Service Commission, acting under its power to fix railroad rates conferred by the legislature, may reduce the rate of fare allowed by such charter without infringing the federal constitutional prohibition against the impairment of contracts. (People ex rel. D. and H. Co. v. Pub. Serv. Com., 140 App. Div. 839.) (1910.)

The legislature has power to regulate, control and fix the rate of fare upon railroads in this state, and may

amend a corporate charter in any manner which will not defeat or substantially impair the vested rights of the corporation. The fact that the statute increases its expenses or diminishes its revenues does not for that reason alone violate the constitution. (People ex rel. Cohoes Railway Co. v. Public Serv. Com., 143 App. Div. 769.) (1911.)

Dues of corporations.— § 2. Dues from corporations shall be secured by such individual liability of the corporators and other means as may be prescribed by law.

[Section 2 of article VIII of the amended constitution of 1846, without change.]

This does not include dues to directors. (McDowall v. Sheehan, 129 N. Y. 200.)

Corporation, definition of term.— § 3. The term corporation as used in this section shall be construed to include all associations and joint-stock companies having any of the powers or privileges of corporations not possessed by individuals or partnerships. And all corporations shall have the right to sue and shall be subject to be sued in all courts in like cases as natural persons.

[Section 3 of article VIII of the amended constitution of 1846, without change.]

The provision that corporations shall be subject to be used in like cases as natural persons is an enabling, and not a restraining one, and summary proceedings to enforce a liability are valid. (Matter of Empire City Bank, 18 N. Y. 179.)

This provision was intended to confer on corporations the capacity to be sued, not to define cases in which suits may be maintained against them. (Gray v. City of Brooklyn, 10 Abb. [N. S.] 186; Van Vranken v. City of Schenectady, 31 Hun, 516.)

A provision in a corporation charter that " all applications for injunctions " shall be made only to the supreme court

is void, being a violation of this section. (Story v. N. Y. Elevated R. R. Co., 3 Abb. N. C. 478.)

A statute requiring a notice before an action can be maintained against a municipal corporation because of personal injuries received from defective sidewalks is constitutional. (Smith v. City of Rochester, 46 St. Rep. 727, citing McNally v. City of Cohoes, 127 N. Y. 350.)

As to liability of joint-stock associations to taxation under statutes taxing corporations, see People ex rel. Platt v. Wemple, 117 N. Y. 136, citing Waterbury v. Merchants' Union Express Company, 50 Barb. 158; Westcott v. Fargo, 6 Lans. 319; People ex rel. Winchester v. Coleman, 133 N. Y. 279.

Corporations have not the general power to sue in all kinds of actions, but only in those which relate to their corporate rights, just as the citizen is confined to actions in which he has a real interest. A school district can have no standing in the courts except for the purpose of protecting and maintaining its corporate powers and in carrying out the objects for which it was created. (Board of Education v. Board of Education, 76 App. Div. 355.)

A state hospital for the care and treatment of the poor and indigent insane of the state, declared by section 30 of the insanity law to be a "corporation" has the constitutional right to sue in all courts in like cases as a natural person. (Matter of Buffalo State Hospital, 47 Misc. Rep. 33.) (1905.)

Savings bank charters; restrictions upon trustees; special charters not to be granted.—§ 4. The Legislature shall, by general law, conform all charters of savings banks, or institutions for savings, to a uniformity of powers, rights and liabilities, and all charters hereafter granted for such corporations shall be made to conform to such general law, and to such amendments as may be made thereto. And no such corporation shall have any capital stock, nor shall the trustees thereof, or any of them, have any interest whatever, direct or indirect, in the profits of such corporation; and no

director or trustee of any such bank or institution shall be interested in any loan or use of any money or property of such bank or institution for savings. The Legislature shall have no power to pass any act granting any special charter for banking purposes; but corporations or associations may be formed for such purposes under general laws.

[Section 4 of article VIII of the amended constitution of 1846, without change.]

The provision relating to the granting of "special charters for banking purposes" relates to banking business that might be carried on at the time of the adoption of the provision in 1846, as authorized by the banking act, passed April 18, 1838; and, therefore, a special charter granted to the United States Deposit Company is valid. (United States Deposit Co. v. Brady, 20 Barb. 119; Pardee v. Fish, 60 N. Y. 265.)

Franchise tax on savings bank held constitutional. Interest accrued on investments, although not yet due, should be included and stocks and bonds should be assessed at par value although actual value is less than par. (People v. Miller, 84 App. Div. 168.) (1903.)

Specie payment.— § 5. The Legislature shall have no power to pass any law sanctioning in any manner, directly or indirectly, the suspension of specie payments, by any person, association or corporation, issuing bank notes of any description.

[Section 5 of article VII of the amended constitution of 1846, amended.]

Registry of bills or notes.— § 6. The Legislature shall provide by law for the registry of all bills or notes,

issued or put in circulation as money, and shall require ample security for the redemption of the same in specie.

[Section 7 of article VIII of the amended constitution of 1846, without change.]

Liability of stockholders of banks.—§ 7. The stockholders of every corporation and joint-stock association for banking purposes, shall be individually responsible to the amount of their respective share or shares of stock in any such corporation or association, for all its debts and liabilities of every kind.

[Section 7 of article VIII of the amended constitution of 1846, amended.]

This section applies to banks chartered before the constitution of 1846. (Matter of Reciprocity Bank, 17 How. Pr. 323.)

The liability of a stockholder under this section is not limited to the amount of capital stock which he has agreed to pay, but it extends to an amount equal to the stock held by him and additional thereto. (Matter of Empire City Bank, 18 N. Y. 179; Briggs v. Penniman, 8 Cow. 387.)

(See Barnes v. Arnold, 23 Misc. Rep. 197.) (1898.)

Section 55 of the stock corporation law, having been enacted prior to the adoption of section 7, article VIII of the constitution, survives, and is not in conflict therewith, so far at least as said section 55 contemplates the performance of conditions precedent. (Gause v. Baldt, 49 Misc. Rep. 340.) (1906.)

Billholders of insolvent bank, preferred creditors.—§ 8. In case of the insolvency of any bank or banking association, the billholders thereof shall be entitled to preference in payment, over all other creditors of such bank or association.

[Section 8 of article VIII of the amended constitution of 1846, without change.]

Credit or money of the State not to be given.— § 9. Neither the credit nor the money of the State shall be given or loaned to or in aid of any association, corporation or private undertaking. The section shall not, however, prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper. Nor shall it apply to any fund or property now held, or which may hereafter be held, by the State for educational purposes.

[Section 10 of article VIII of the amended constitution of 1846, without change.]

This provision has reference to moneys raised by taxation throughout the state and paid out of the state treasury, and does not prevent the legislature from authorizing a board of supervisors to impose a tax for the relief of poor through the instrumentality of a charitable institution (Shepherd's Fold v. Mayor, etc., of New York, 96 N. Y. 137; White v. The Inebriates' Home for Kings Co., 141 id. 123.)

This section refers to private and business corporations, not to a municipality. (Supervisors of Cayuga Co. v. State, 153 N. Y. 279.) (1897.)

Chapter 122, Laws of 1898, which in effect constitutes Cornell University an agent of the state for the performance of experimental and educational work in forestry upon lands within the limits comprising the forest preserve does not violate the constitutional prohibition against giving or loaning money or credit of the state. (People v. Brooklyn Cooperage Co., 187 N. Y. 142.) (1907.) (Affd. 114 App. Div. 722.)

Limitation of indebtedness of counties, cities, towns and villages; exception as to city of New York.— § 10.

No county, city, town or village shall hereafter give any money or property, or loan its money or credit to or in aid of any individual, association or corporation, or become directly or indirectly the owner of stock in, or bonds of, any association or corporation; nor shall any such county, city, town or village be allowed to incur any indebtedness except for county, city, town or village purposes. This section shall not prevent such county, city, town or village from making such provision for the aid or support of its poor as may be authorized indebted for any purpose or in any manner to an amount by law. No county or city shall be allowed to become which, including existing indebtedness, shall exceed 10 per centum of the assessed valuation of the real estate of such county or city subject to taxation, as it appeared by the assessment-rolls of said county or city on the last assessment for State or county taxes prior to the incurring of such indebtedness; and all indebtedness in excess of such limitation, except such as now may exist, shall be absolutely void, except as herein otherwise provided. No county or city whose present indebtedness exceeds 10 per centum of the assessed valuation of its real estate subject to taxation, shall be allowed to become indebted in any further amount until such indebtedness shall be reduced within such limit. This section shall not be construed to prevent the issuing of certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes for amounts actually contained or to be contained in the taxes for the year when such certificates or revenue bonds are issued and payable out of such

taxes; nor to prevent the city of New York from issuing bonds to be redeemed out of the tax levy for the year next succeeding the year of their issue, provided that the amount of such bonds which may be issued in any one year in excess of the limitations herein contained shall not exceed one-tenth of 1 per centum of the assessed valuation of the real estate of said city subject to taxation. Nor shall this section be construed to prevent the issue of bonds to provide for the supply of water; but the term of the bonds issued to provide the supply of water, in excess of the limitation of indebtedness fixed herein, shall not exceed twenty years, and a sinking fund shall be created on the issuing of said bonds for their redemption, by raising annually a sum which will produce an amount equal to the sum of the principal and interest of said bonds at their maturity. All certificates of indebtedness or revenue bonds issued in anticipation of the collection of taxes, which are not retired within five years after their date of issue, and bonds issued to provide for the supply of water, and any debt hereafter incurred by any portion or part of a city if there shall be any such debt, shall be included in ascertaining the power of the city to become otherwise indebted; except that debts incurred by the city of New York after the first day of January, nineteen hundred and four, and debts incurred by any city of the second class after the first day of January, nineteen hundred and eight, and debts incurred by any city of the third class after the first day of January, nineteen hundred and ten, to provide for the supply of water, shall not be so included;

and except further that any debt hereafter incurred by the city of New York for a public improvement owned or to be owned by the city, which yields to the city current net revenue, after making any necessary allowance for repairs and maintenance for which the city is liable, in excess of the interest on said debt and of the annual instalments necessary for its amortization may be excluded in ascertaining the power of said city to become otherwise indebted, provided that a sinking fund for its amortization shall have been established and maintained and that the indebtedness shall not be so excluded during any period of time when the revenue aforesaid shall not be sufficient to equal the said interest and amortization instalments, and except further that any indebtedness heretofore incurred by the city of New York for any rapid transit or dock investment may be so excluded proportionately to the extent to which the current net revenue received by said city therefrom shall meet the interest and amortization instalments thereof, provided that any increase in the debt incurring power of the city of New York which shall result from the exclusion of debts heretofore incurred shall be available only for the acquisition or construction of properties to be used for rapid transit or dock purposes. The Legislature shall prescribe the method by which and the terms and conditions under which the amount of any debt to be so excluded shall be determined, and no such debt shall be excluded except in accordance with the determination so prescribed. The Legislature may in its discretion confer appropriate jurisdiction on the appellate division of the supreme court in the first judicial department for the purpose of de-

termining the amount of any debt to be so excluded. No indebtedness of a city valid at the time of its inception shall thereafter become invalid by reason of the operation of any of the provisions of this section. Whenever the boundaries of any city are the same as those of a county, or when any city shall include within its boundaries more than one county, the power of any county wholly included within such city to become indebted shall cease, but the debt of the county, heretofore existing, shall not, for the purposes of this section, be reckoned as a part of the city debt. The amount hereafter to be raised by tax for county or city purposes, in any county containing a city of over one hundred thousand inhabitants, or any such city of this State, in addition to providing for the principal and interest of existing debt, shall not in the aggregate exceed in any one year 2 per centum of the assessed valuation of the real and personal estate of such county or city, to be ascertained as prescribed in this section in respect to county or city debt. [Amended by vote of People Nov. 5, 1907, and Nov. 2, 1909.]

[Section 11 of article VIII of the amended constitution of 1846, with the following changes: (1) Extending the limitation of indebtedness to all cities and counties; (2) providing that certificates or bonds issued in anticipation of the collection of taxes, not retired within five years, water bonds and debts incurred by a part of a city shall be included in ascertaining the power to contract further indebtedness; and (3) providing that the power of a county to contract a debt shall cease when the boundaries of the county and city shall become co-terminus.]

[Section 11 of article VIII of the amended constitution of 1846, amended.]

The legislature has power to compel a town to pay bonds issued for a local improvement, although the statute under which they were issued is unconstitutional. (Knapp v. Town of Newton, 1 Hun, 268; Town of Cherry Creek v. Becker, 123 N. Y. 161.)

This section does not prohibit the legislature from enacting a statute authorizing two cities to construct a public bridge connecting them. (People ex rel. v. Kelly, 76 N. Y. 475.)

An issue of bonds to raise money to make immediate payment for local improvements, to be reimbursed by a subsequent assessment on the landowners benefited, is not a loaning of city "credit or money" within the prohibition of this section. (People ex rel. v. Banks, 67 N. Y. 568.)

The caring for the poor of a city through the instrumentality of a private corporation is not prohibited by this section, and is not a gift of city money. (The Shepherd's Fold v. Mayor of N. Y., 96 N. Y. 137.) An act providing that a part of city excise money be paid to the use of an inebriate asylum for the care of inebriates of a certain locality is making a provision for the support of the poor. (White v. The Inebriate Home for Kings Co., 141 id. 123.)

The creation of a liability on towns for damages occasioned by defective highways and bridges is not a gift of the money or property of the towns to or in aid of an individual within the meaning of this section. (Bidwell v. Town of Murray, 40 Hun, 190.)

An act authorizing a town holding railroad bonds to exchange them for common stock in the same railroad is unconstitutional. (Town of Wheatland v. Taylor, 29 Hun, 70.)

The creation of a debt for the purchase of lands outside the city limits for a park, is for a "city purpose," and therefore valid. (Matter of Mayor, etc., of New York, 99 N. Y. 569.)

And the creation of a debt for the construction and operation of an electric light system by a city for its own

and the use of its inhabitants is for a "city purpose." (Hequembourg v. City of Dunkirk, 49 Hun, 550.)

Municipalities have the right to compromise a claim which they dispute, but which in the end they deem wise and prudent to acknowledge in part. (Hills v. Peekskill Savings Bank, 101 N. Y. 490.)

Stocks and bonds created by the city of New York and held by the commissioners of the sinking fund are not debts to be met in the future by taxation, and are not such debts as the municipality can be called upon to pay. (Bank for Savings in New York City v. Grace, 102 N. Y. 313.)

The issue of bonds by a city for a water supply is for a "city purpose" and therefore not within the prohibition of this section. (Sweet v. City of Syracuse, 129 N. Y. 316.)

This section only imposes a limitation upon water bonds, the issue of which passes the limit of indebtedness, and water bonds issued within such limit may be made to run for a longer period than twenty years. (City of Rochester v. Quintard, 136 N. Y. 221.)

In determining the limit of indebtedness, the valuation of real estate in the city and county is to be taken distributively and not collectively. (Adams v. East River Savings Inst., 136 N. Y. 52.)

A city purpose must be one necessary for the common good and general welfare of the people of the municipality, sanctioned by its citizens, public in character and authorized by the legislature. (Sun Printing Co. v. Mayor, 151 N. Y. 257.) (1897.)

The New York Rapid Transit Act upheld as providing for a city purpose. (Id.)

The "drafted men's act" held unconstitutional, as violative of the provisions prohibiting the giving of money or property in aid of an individual. (Bush v. Board of Supervisors, 159 N. Y. 212.) (1899.)

An act providing for the reimbursement of counsel fees incurred by city or county official successfully defending proceedings instituted to remove him from office and convict him of crime committed in connection with official

duties are unconstitutional. (Matter of Straus, 44 App. Div. 425.) (1899.) (Chapman v. City of New York, 168 N. Y. 80.) (1901.) (Matter of Fallon, 28 Misc. Rep. 748; Matter of Jensen, 28 Misc. Rep. 378. Affd., 44 App. Div. 509.)

Provisions of labor law relative to prevailing rate of wages is unconstitutional because it requires the expenditure of the money of the city or that of the local property-owner for other than city purposes. (People ex rel. Rodgers v. Coler, 166 N. Y. 1.) (1901.)

Railroad grade crossing act does not violate this section. (Matter of B. & A. R. R. Co., 64 App. Div. 257.) (1901.)

Chapter 448, Laws 1896, prohibiting harboring of dogs without annual license procured from society for prevention of cruelty to animals, so far as it compels the owners of dogs to pay license fees to such society, is unconstitutional, since such fees are public moneys, and their appropriation to a private society is a gift of public moneys to or in aid of an association, corporation or private undertaking. (Fox v. Mohawk & H. R. Humane Assn., 165 N. Y. 517.) (1901.)

Where a final judgment has been rendered in favor of the county upon the merits of a claim, the legislature cannot, through a special act, vacate or disregard it and direct the levy of a tax to pay it, but where the judgment is not upon the merits, but is obtained on account of a technical defect in the authority of its officers to contract the debt, the legislature may direct a re-examination and determination, and if found to be just that it be paid. (Matter of Green, 166 N. Y. 485.) (1901.)

An act providing for the erection of a soldiers and sailors' monument in the city of New York constitutional. (Parsons v. Van Wyck, 56 App. Div. 329.) (1901.)

Limitation upon power of county to incur indebtedness does not apply to obligations of county for current expenses for salaries of county officers. (McGrath v. Grout, 171 N. Y. 7.) (1902.)

Semble. That act authorizing payment of pension by the city to the widow of a policeman who was not a member

of the force at the time of his death and had died before enactment of statute would be unconstitutional. (People v. Partridge, 172 N. Y. 305.) (1902.)

A clause in a municipal contract for local improvement that the contractor can enforce payment only to the extent that money is collected is not a pledging of the city's credit. The debt created under such a contract is not an obligation or liability of the city as the contractor is limited to and relies upon the specific fund realized from the collection of the assessments for the payment of the indebtedness and there is no infraction of the constitutional debt limitation, even though the sum to be paid overruns that boundary. Special franchises appearing upon the assessment-roll of the city are real property to be construed as part of the assessable real estate of the city. Cash resources of the city which can only be applied upon specific outstanding obligations should be deducted in determining whether the debt limit has been exceeded but general cash resources should not be taken into account. (Kronsbein v. City of Rochester, 76 App. Div. 494.) (1902.)

Statute directing payment by a county of compensation to an attorney assigned to defend a prisoner accused of capital offense held constitutional. (People v. Grout, 87 App. Div. 193.) (1903.) (Affd., 177 N. Y. 587.) (1904.)

Act authorizing city of New York to convey property to Mount Sinai hospital held to be a gift of public property for private use and unconstitutional. (Mount Sinai Hospital v. Hyman, 92 App. Div. 270.) (1904.)

Chapter 637, Laws of 1904, proving that a veteran of the war of the rebellion, unlawfully removed from employment in civil service, shall receive compensation from date of his removal to date of reinstatement, does not contravene section 10 of article VIII. (People ex rel. Blair v. Grout, 44 Misc. Rep. 526.) (1904.)

Chapter 610, Laws of 1903, so far as it may be construed as making the town of East Chester liable for damages sustained through change of grade of highways made prior to the enactment of that act, does not conflict with section 10 of article VIII of the constitution. While there was no legal

right to damages prior to that act in question, the claim of the property-owner to compensation for injuries thereto was founded in equity and justice, and it was competent for the legislature to make it obligatory upon the town to pay it when the amount thereof was ascertained in due course of law. (Matter of Borup, 182 N. Y. 222.) (1905.) (Affd. 102 App. Div. 262.)

The provisions of the charter of the city of Tonawanda (L. 1905, chap. 357), authorizing the sale of surplus water to corporations or individuals outside the city does not violate the constitutional prohibition from giving any of its property to or in aid of any individual, association or corporation. The authority granted is merely to sell surplus water property for which the city has no use. (Simpson v. Parker, 190 N. Y. 19.) (1908.) (Revd. 113 App. Div. 888.)

The construction of a sanitary sewer to drain at large a large and thickly populated part of a county consisting of several municipalities, is a legitimate county purpose, which could be undertaken by any one of such municipalities alone. And an act authorizing the construction of such a sewer and providing for the issuance of bonds for the purpose of raising funds for its construction is not violative of the constitution, article VIII, section 10. (Horton v. Andrews, 191 N. Y. 331.) (1908.) (Affd. 121 App. Div. 918.)

Chapter 440, Laws of 1906, which includes veteran firemen's associations among the charitable organizations exempt from water rates under chapter 696, Laws of 1887, does not offend against section 10 of article VIII of the constitution providing that no municipality shall give any money or property or loan its money or credit to or in aid of individuals, associations or corporations, etc. The constitution does not prevent a municipality from fulfilling honorable obligations founded upon public services rendered. (People ex rel. Volunteer Firemen v. Metz, 120 App. Div. 565.) (1907.)

Special franchises are real estate for the purpose of assessment in the city of New York. (Leng v. McClellan, 196 N. Y. 178.) (1909.)

Section 170 of the general village law (L. 1907, chap. 93), authorizing the application of village funds for the

care and maintenance of streets which the board of trustees is unable to accept by dedication, is a violation of the constitution. (Smith v. Smythe, 197 N. Y. 457.) (1910.)

Certain bonds of the city of New York incurred for the Manhattan and Bronx rapid transit railroad excluded from the debt limit. (Matter of City of New York, 139 App. Div. 40.) (1910.)

A statute recognizing claims against a municipality which though technically illegal are mainly meritorious in that the municipality has had the benefit of the materials is constitutional. (People ex rel. Wiffler v. Miller, 68 Misc. Rep. 445.) (1910.)

Chapter 543, Laws of 1894, is unconstitutional. A municipality is not liable to a *de jure* officer for salary paid a *de facto* officer. His remedy is an action for damages against the usurper. (Stemmler v. City of New York, 179 N. Y. 473.) (1904.) See Demarest v. Mayor, 147 id. 207.) (1895.)

The public service commissions law (L. 1907, chap. 429), providing that in the first district salaries of certain employees shall be paid by the city of New York does not offend the constitution. (Gubner v. McLellan, 130 App. Div. 716.) (1910.)

The employment by a city of a sexton for a cemetery not owned by the city and outside its limits is a violation of this section. (Holley v. City of Mount Vernon, 141 App. Div. 823.) (1910.)

A provision of a city charter exempting the municipality from liability for injuries caused by defective highways unless actual notice of the defect be given to certain officers is constitutional. (Gregorius v. City of Corning, 140 App. Div. 701.) (1910.)

A law providing for interest on awards for damages sustained by reason of change of grade of a street or highway in the state authorizes the payment by municipal corporations of claims founded in justice and supported by a moral obligation and does not conflict with this provision. (People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188.) (1911.)

State board of charities; State commission in lunacy; State commission of prisons.— § 11. The Legislature shall provide for a state board of charities, which shall visit and inspect all institutions, whether state, county, municipal, incorporated or not incorporated, which are of a charitable, eleemosynary, correctional or reformatory character, excepting only such institutions as are hereby made subject to the visitation and inspection of either of the commissions hereinafter mentioned, but including all reformatories except those in which adult males convicted of felony shall be confined; a state commission in lunacy which shall visit and inspect all institutions, either public or private, used for the care and treatment of the insane (not including institutions for epileptics or idiots); a state commission of prisons which shall visit and inspect all institutions used for the detention of sane adults charged with or convicted of crime, or detained as witnesses or debtors.

[New. For acts creating present state board of charities, see L. 1867, chap. 951; L. 1873, chap. 571, and 1878, chap. 661; R. S., 8th ed., pp. 2137-45. For acts relating to the present state commission in lunacy, see L. 1889, chap. 283, as amended by L. 1890, chap. 273; R. S., 8th ed. (Supp.), 3436.]

Boards appointed by Governor.— § 12. The members of the said board and of the said commissions shall be appointed by the Governor, by and with the advice and consent of the Senate; and any member may be removed from office by the Governor for cause, an opportunity having been given him to be heard in his defense.

[New.]

Existing laws to remain in force.— § 13. Existing laws relating to institutions referred to in the foregoing sections and to their supervision and inspection, in so far as such laws are not inconsistent with the provisions of the Constitution, shall remain in force until amended or repealed by the Legislature. The visitation and inspection herein provided for shall not be exclusive of other visitation and inspection now authorized by law.

[New.]

Maintenance and support of inmates of charitable institutions.—§ 14. Nothing in this Constitution contained shall prevent the Legislature from making such provision for the education and support of the blind, the deaf and dumb, and juvenile delinquents, as to it may seem proper; or prevent any county, city, town or village from providing for the care, support, maintenance and secular education of inmates of orphan asylums, homes for dependent children or correctional institutions, whether under public or private control. Payments by counties, cities, towns and villages to charitable, eleemosynary, correctional and reformatory institutions, wholly or partly under private control, for care, support and maintenance, may be authorized, but shall not be required by the Legislature. No such payments shall be made for any inmate of such institutions who is not received and retained therein pursuant to rules established by the state board of charities. Such rules shall be subject to the control of the Legislature by general laws.

[New.]

This section created a mere limitation on legislative power and future action by the legislature, but did not render nugatory existing laws. (People ex rel. Inebriates' Home v. Comptroller of Brooklyn, 152 N. Y. 399.) (1897.)

This section operated presently so that now the time rules were established by the state board, no payment of inmates of charitable institutions not received or retained in pursuance thereof would be justified. (People ex rel. N. Y. Institution for Blind v. Fitch, 154 N. Y. 14.) (1897.)

The New York Institution for the Blind held a charitable institution under this section. (People ex rel. N. Y. Institution for Blind v. Fitch, 154 N. Y. 14.) (1897.)

Funds raised by taxation may be paid for instruction in an orphan asylum subject to the rules and regulations of the public schools and to the visitation of the state board of charities. (Sargent v. Board of Education, 177 N. Y. 317.) (1903.)

Act authorizing payment of public moneys to a charitable institution for support of inmates who are not received and retained therein pursuant to the rules established by the state board of charities are superseded and repealed by this section and such payment is unconstitutional. (Matter of New York Juvenile Asylum, 172 N. Y. 50.) (1902.)

This section contemplates the payment of money to charitable institutions to be applied subject to the rules and regulations established by the state board of charities and not the making of absolute grants of real estate subject to no restrictions whatever. (Mount Sinai Hospital v. Hyman, 92 App. Div. 270.) (1904.)

Commissioners continued in office.— § 15. Commissioners of the state board of charities and commissioners of the state commission in lunacy, now holding office, shall be continued in office for the term for which they were appointed, respectively, unless the Legislature shall otherwise provide. The Legislature may confer upon the commissions and upon the board mentioned in the foregoing sections any additional powers that are not inconsistent with other provisions of the Constitution.

[New.]

ARTICLE IX.

Common schools.— Section 1. The Legislature shall provide for the maintenance and support of a system of free common schools, wherein all the children of this State may be educated.

[New.]

The school board is authorized to maintain separate schools for the education of colored children and to exclude them from the other schools having made the same provisions for their education as are made for others so far as the nature, extent and character of education and facilities for maintaining it are concerned. (People v. School Board, 161 N. Y. 598.) (1900.)

The maintenance and support of an educational system is not a constitutional right but rather a privilege, and is subject to such reasonable regulations as the legislature may impose, provided that such regulations operate equally upon all persons in the same class and under the same conditions. (Matter of Viemaster v. White, 88 App. Div. 44.) (1903.) (Affd., 179 N. Y. 235.) (1904.)

Regents of the university.— § 2. The corporation created in the year one thousand seven hundred and eighty-four, under the name of The Regents of the University of the State of New York, is hereby continued under the name of The University of the State of New York. It shall be governed and its corporate powers, which may be increased, modified or diminished by the Legislature, shall be exercised by not less than nine regents.

[New.]

Common school, literature and the United States deposit funds.— § 3. The capital of the common school fund, the capital of the literature fund, and the capital of the United States deposit fund, shall be respectively preserved inviolate. The revenue of the said common

school fund shall be applied to the support of the common schools; the revenue of the said literature fund shall be applied to the support of academies; and the sum of twenty-five thousand dollars of the revenues of the United States deposit fund shall each year be appropriated to and made part of the capital of the said common school fund.

[Section 1 of article IX of the amended constitution of 1846, without change.]

A statute authorizing an orphan asylum to share in the common school fund would be in violation of this section. (People ex rel. v. Board of Education, 13 Barb. 400.)

The manner of the disposition of the common school fund is left to the legislature. (Dallas v. Fosdick, 40 How. Pr. 249, 252.) But the legislature cannot appropriate therefrom for the construction of an astronomical observatory. (People ex rel. v. Allen, 42 N. Y. 401.) Nor for the benefit of a normal school. (Gordon v. Cornes, 47 id. 608.)

The words "common schools" as used in this section mean such schools as are open to all, and not confined to any class. (People v. Board of Education, 13 Barb. 400; People ex rel. v. Crissley, 45 Hun, 19.)

No aid in denominational schools.— § 4. Neither the State nor any subdivision thereof, shall use its property or credit or any public money, or authorize or permit either to be used, directly or indirectly, in aid or maintenance, other than for examination or inspection, of any school or institution of learning wholly or in part under the control or direction of any religious denomination, or in which any denominational tenet or doctrine is taught.

[New.]

An orphan asylum subject to the rules and regulations of the public schools and to the visitation of the state board of charities is not within the prohibition of this section as a religious denominational institution. (Sargent v. Board of Education, 177 N. Y. 317.) (1903.)

A religious corporation maintaining a school under the direction of the regents and subject to the visitation of the superintendent of schools of the city in which it is located is entitled to free water under a contract of the city with a water company. (St. Patrick's Church Society of Corning v. Heermans, 68 Misc. Rep. 487.) (1910.)

ARTICLE X.

Sheriffs, clerks of counties, district attorneys and registers; Governor may remove.— Section 1. Sheriffs, clerks of counties, district attorneys and registers in counties having registers, shall be chosen by the electors of the respective counties, once in every three years and as often as vacancies shall happen, except in the counties of New York and Kings, and in counties whose boundaries are the same as those of a city, where such officers shall be chosen by the electors once in every two or four years as the Legislature shall direct. Sheriffs shall hold no other office and be ineligible for the next term after the termination of their offices. They may be required by law to renew their security, from time to time; and in default of giving such new security, their offices shall be deemed vacant. But the county shall never be made responsible for the acts of the sheriff. The Governor may remove any officer, in this section mentioned, within the term for which he shall have been elected; giving to such officer a copy of the charges against him, and an opportunity of being heard in his defense.

[Section 1 of article X of the amended constitution of 1846, amended. The reference to "coroners" is omitted; therefore, that office ceases to be a constitutional one and may be abolished by the legislature. The provision that in counties whose boundaries are the same as cities, these officers shall be elected for two or four years as the legislature shall direct, is new.]

Officers elected to fill vacancies serve for the full term of three years. (People v. Green, 2 Wend. 266; Coutant v. People, 11 id. 511.)

Where the constitution provides for the appointment of an officer in a particular manner the legislature has no power to create a new officer to perform the same duties, or the principal part of the same duties. (Warner v. People, 2 Denio, 272.)

An act depriving the sheriff of the custody and control of the jail and the prisoners therein deprived him of common-law powers and duties pertaining to his office prior to the adoption of this section and is unconstitutional. (People ex rel. v. Keeler, 29 Hun, 175.)

An act making counties liable for damages caused by mobs and riots is not in conflict with the provision that counties shall not be made liable for acts of sheriff. (Moody v. Supervisors, 46 Barb. 659.)

The provision of this section did not authorize an extension of the term of the district attorney of Kings county in office when the constitution took effect, to four years. (People ex rel. Eldred v. Palmer, 154 N. Y. 133.) (1897.)

A statute which is unconstitutional because attempting to deprive justices of peace of their jurisdiction in criminal matters, is also operative in so far as it attempts to deprive a deputy sheriff or compensation for executing the processes of such justices, whether a deputy sheriff be regarded as a constitutional officer or not. (People ex rel. Ryan v. Supervisors, 155 N. Y. 295.) (1898.)

Act authorizing assignment of a deputy attorney-general to act as counsel for the metropolitan superintendent of elections does not violate the provisions of this section, providing for election of district attorney. (People v. Kramer, 33 Misc. Rep. 209.) (1901.)

The power vested in the governor by this section to remove officers therein designated upon charges and after a hearing is executive and not judicial and the exercise of such power is not reviewable by the courts. (Matter of Guden, 171 N. Y. 529.) (1902.)

Appointment or election of officers, not provided for by this Constitution.—§ 2. All county officers whose election or appointment is not provided for by this Constitution, shall be elected by the electors of the re-

spective counties or appointed by the boards of supervisors, or other county authorities, as the Legislature shall direct. All city, town and village officers, whose election or appointment is not provided for by this Constitution, shall be elected by the electors of such cities, towns and villages, or of some division thereof, or appointed by such authorities thereof, as the Legislature shall designate for that purpose. All other officers, whose election or appointment is not provided for by this Constitution, and all officers, whose offices may hereafter be created by law, shall be elected by the people, or appointed, as the Legislature may direct.

[Section 2 of article X of the amended constitution of 1846, without change.]

The reservation to the electors or local authorities to elect or appoint county, city, town and village officers relates only to such officers as existed at the time of the adoption of the constitution. (People ex rel. v. Draper, 15 N. Y. 532; People v. Pinckney, 32 id. 377; Fire Department v. Steamship Co., 106 id. 566.)

Firemen in cities and villages are not civil and public officers within the provisions of this section. (People v. Pinckney, 32 N. Y. 377.)

Office of commissioners of taxes in city of New York, comprised functions of office existing at the time of adoption of the constitution and cannot be filled by appointment of the governor. (People v. Raymond, 37 N. Y. 428.)

This constitutional right of local self-government cannot be evaded by a change in the name of an office, nor can an office be divided and the duties assigned to two or more officers of different names. (People ex rel. v. Albertson, 55 N. Y. 50.)

Office of commissioner of records in city of New York does not supersede or interfere with that of register and is a new office. (People ex rel. v. Palmer, 52 N. Y. 83.)

Act of legislature extending terms of town collectors then

in office, is an attempted exercise of the power of appointment and is unconstitutional. (People ex rel. v. McKinney, 52 N. Y. 374; People ex rel. v. Crooks, 53 id. 648.)

Act extending the jurisdiction of park commissioners of New York city over land in Westchester authorized to be acquired by it is not violative of this section. (Matter of Application of Mayor, etc., of New York, 99 N. Y. 569.)

Legislature can clothe officers appointed by it for the purpose of carrying out a public improvement with power to perform acts which at the time of the adoption of the constitution was vested in local officers elected by the people, if such acts had special relation to such improvement. (Astor v. Mayor, etc., 62 N. Y. 567. And see also Fire Department v. Steamship Co., 106 id. 566, 577.)

And so the legislature may provide for the widening of a street in a village by the appointment of commissioners. (People ex rel. v. McDonald, 69 N. Y. 362; Hanlon v. Supervisors, 57 Barb. 397.)

The provisions of this section include superintendents of the poor, and the legislature may direct that vacancies in such office be filled by boards of supervisors. (People ex rel. v. Comstock, 78 N. Y. 356; People ex rel. v. Clute, 50 id. 451, 459.)

The office of health officer of the port of New York is not a county or city officer, and the governor may appoint. (In Matter of Whiting, 2 Barb. 513.)

A commissioner of loans was a county officer at the time of the adoption of the constitution of 1846, and the governor cannot appoint. This does not refer to United States loan commissioners. (Matter of Carpenter, 7 Barb. 30.)

President pro tempore of board of supervisors is a county authority, and an act authorizing him to appoint commissioners is constitutional. (Matter of Carboy, 27 Hun, 82.)

An act creating a board of water commissioners is constitutional as creating new offices, the duties of which had not devolved upon other officers. (Hequembourg v. Dunkirk, 49 Hun, 550.)

Act vesting appointment of tax commissioners in city of New York upon governors was declared unconstitutional. (People v. Raymond, 37 N. Y. 428.)

An act providing for the appointment of pilot commissioners by the Chamber of Commerce and the presidents

of the marine insurance companies is within the provisions of this section relating to the appointment of officers created by the legislature and is valid. (Sturgis v. Spofford, 45 N. Y. 446.)

An act directing that regulations of mayor for admission into the civil service of a city be submitted to the state board of civil service commissioners for their approval, does not interfere with the general powers of the local authorities to appoint. (Rogers v. Common Council of Buffalo, 123 N. Y. 173.)

Where a new town is created out of an old one, an act providing that the officers of the old shall act as the officers of the new town until the next election is constitutional. (People ex rel. v. Hayt, 7 Hun, 39.)

An act transferring power from one local board to another is not contrary to this section. (Matter of Lester, 21 Hun, 130.)

The provisions of this section relate to villages incorporated since the adoption of the constitution of 1846, and the part of an act naming village officers would be unconstitutional. (People v. Blake, 49 Barb. 9.)

Trustees of school districts are not "county, city, town or village" officers within the provisions of this section. (People ex rel. v. Bennett, 54 Barb. 480.)

The office of school commissioner is created by law, and made elective by the direction of the legislature according to the alternative provided by this section, and an act permitting women to vote for a person to fill such office is unconstitutional. (Matter of Gage, 141 N. Y. 112.)

The legislature cannot extend the term of a town officer after his election, since that would virtually be an appointment to the office during the term of such extension. (People ex rel. Le Roy v. Foley, 148 N. Y. 677.) (1896.)

Legislature has no power to elect a town officer, and an act extending the term of a highway commissioner cannot have the effect of extending the term of one already in office. (People ex rel. Lovett v. Randall, 151 N. Y. 497.) (1897.)

Laws 1896, chapter 427, the Albany police law, which provided for the appointment of a portion of the police commissioners by a minority of the common council, and

possibly by a single member, held unconstitutional; a minority of the common council not being a local authority within the meaning of the constitution. (Rathbone v. Wirth, 150 N. Y. 459.) (1896.)

A provision that not more than one of the police commissioners of a county shall be of the same political opinion on state and national politics, is not violative of this section. (Pearce v. Stephens, 18 App. Div. 101.) (1897.)

The election of a village president by trustees is not violative of this section. (People ex rel. Whitehall v. Sturges, 21 Misc. Rep. 605.) (1897.)

Laws 1896, chapter 424, extending terms of coroner chosen for two years, to four years, held unconstitutional. (Matter of Bruger, 21 Misc. Rep. 370.) (1897.)

An act providing that the members of the police force of the city of New York who were officers of the New Utrecht police force before its annexation shall be graded in the same rank as they then held and receive the same pay as officers of corresponding rank in the New York police force is unconstitutional. As a police officer by reason of his relation to the corporation and its power over him, notwithstanding the general character of his duties, is a city officer within the meaning of the constitution and cannot be appointed by legislative act. (People v. York, 35 App. Div. 300.) (1898.)

A provision of the civil service law requiring the person graded highest on the civil service list to be appointed deprives the local authorities of the power of appointment and is unconstitutional. (People v. Mosher, 163 N. Y. 32.) (1900.)

Special franchise tax law does not deprive local officers of constitutional rights nor deprive them of substantial powers. (Buffalo Gas Co. v. Volz, 31 Misc. Rep. 160.) (1900.)

An act naming commissioners to audit certain outstanding claims against the city of Syracuse held constitutional. (City of Syracuse v. Hubbard, 64 App. Div. 587.) (1901.)

Act providing for appointment of special courthouse building commission for Oneida county constitutional, the commissioners becoming the agents of the state for the purpose specified and not county officers within the contemplation of

this section. (People v. Supervisors of Oneida County, 170 N. Y. 105.) (1902.)

Charter provision naming sewer, water and street commissioners for first year, unconstitutional. (Village of Saratoga v. Van Norder, 75 App. Div. 204.) (1902.)

Act empowering governor to remove police commissioner is constitutional since the power of appointment and not of removal of local officers is subject to constitutional limitation. (People ex rel. Devery v. Coler, 71 App. Div. 584.) (1902.) (Affd., 173 N. Y. 103.) (1903.)

An act changing the tenure of the position of detective sergeant in New York police force from one existing during pleasure of police commissioner to one subject to same rules and regulations applicable to other positions in department and providing that the force of detective sergeants should consist of those holding that position on April 1, 1901, unconstitutional. (People ex rel. Lakey v. Partridge, 74 App. Div. 291.) (1902.) (People ex rel. Burns v. Partridge, 38 Misc. Rep. 697.) (1902.)

The commissioner of jurors in the county of Kings at the time of the adoption of the present constitution was a county officer and the statute authorizing his appointment by justices of the appellate division of second department unconstitutional. (Matter of Brenner, 170 N. Y. 185.) (1902.)

Statute authorizing appointment of commissioner of jurors in each county of the state having a population of a million or more by the justices of the appellate division held constitutional. (Matter of Allison, 172 N. Y. 421.) (1902.)

Acts authorizing state officials to construct public buildings, parks and highways, the expense of which was to be paid locally have been uniformly sustained, although the power to make such improvements had been previously vested in the local authorities, and it was urged that the transfer was an encroachment upon local self-government; but statutes which, directly or indirectly, authorized the appointment of local officers by state officials, or the legislature, or extended the terms of local officers already elected, or limited the power of local authorities in the appointment of local officers have been condemned as in manifest violation of home rule.

The function of assessing a special franchise is not local, has never been exercised by local officers and is not a

function peculiar to localities. It is a new office with new functions adapted to property of a new kind and differing in principle from any ever dealt with by local assessors. Local self-government is untouched and there is no invasion of local functions. It does not violate the principle of home rule. (People ex rel. Met. Ry, Co. v. Tax Com'rs, 174 N. Y. 417.) (1903.)

The legislature has the power to regulate, increase or diminish the duties of a local officer, subject only to the limitation that no essential or exclusive function belonging to the officer can be transferred to an officer appointed by central authority The office may go but the function must be exercised locally if at all. It is interference with the vital, intrinsic and inseparable functions of the local office that the constitution prohibits. (People ex rel. Met. Ry. Co. v. Tax Com'rs, 174 N. Y. 417.) (1903.)

An act designating a person to fill a vacancy in a local office and extending term of present incumbent, unconstitutional. (Matter of Haase, 41 Misc. Rep. 114; affd., 88 App. Div. 242.) (1903.)

Provisions of New York charter continuing in office the policemen who had been assigned to duty as detective sergeants did not create new office but merely continued an old office with persons who at that time filled it under appointment from city officers and are constitutional. (Sugden v. Partridge, 174 N. Y. 87.) (1903.)

That part of the public health laws, chapter 661, Laws of 1893, section 20, directing a county judge to fill a vacancy occurring in a city board of health which has continued for thirty days so far as it relates to filling a vacancy occurring in the board of health of the city of Oswego, is contrary to the constitution (art. 10, § 2), for the members of said board are city officers and described as such in the charter of that city, and must be appointed as therein directed. (People ex rel. Bush v. Houghton, 182 N. Y. 301.) (1905.) (Affd., 102 App. Div. 209.)

The purposes of the so-called "Home Rule" clauses of the constitution (§§ 2 and 3 of art. 10), was to preserve to the people of the local subdivisions of the State the power to select such local officers as they had theretofore selected, but not to give them the rights to select new officers, even if their duties are local, providing their func-

tions are new and the functions of existing officers are not interfered with.

The office of state superintendent of elections created by the metropolitan elections district law (L. 1898, chap. 676, and L. 1905, chap. 689), is new in name and essentially new in functions: the legislature therefore was authorized to provide for appointment of its incumbent by the governor instead of by some local authority; and the law in that particular regard is a valid exercise of legislative power. (Matter of Morgan v. Furey, 186 N. Y. 202.) (1907.) (Affd., 114 App. Div. 127.)

There is no constitutional restriction upon the powers of the legislature to take authority away from one body of local officials and transfer it to some other body, board or department; such local officials have no vested right to the continuance of any public powers or duties conferred on them by state legislation. (Wilcox v. McClellan, as Mayor, etc., 185 N. Y. 9.) (1906.) (Affd., 110 App. Div. 378.)

Chapter 428, Laws of 1907, authorizing the city of New York to enter into a contract with the village of Mount Kisco for the disposal of sewage is not unconstitutional. (Mead v. Turner, 134 App. Div. 691.) (1909.)

The health officer of a village must be elected by the electors or appointed by the authorities of the village, and section 20 of the public health law requiring the state commissioner of health to appoint such officer upon the nomination of the local board of health is unconstitutional. (Matter of Towne v. Porter, 128 App. Div. 717.) (1908.)

The civil service law and the rules promulgated thereto requiring an appointment from three persons upon the eligible list is not in conflict with this section. (People ex rel. Qua v. Gaffney, 142 App. Div. 122.) (1911.)

A statute providing for the selection of a village officer by the board of trustees by lot in case of a tie vote does not contravene the provisions of this section. (Matter of Frame, 69 Misc. Rep. 568.) (1910.)

A provision of the legislature for nominations to the office of commissioner of elections, which contemplates the nomination of a single candidate only and thus destroys the power of selection of the appointing power, is in contravention of this section. (Matter of Kane, 71 Misc. Rep. 163.) (1911.)

Duration of term.— § 3. When the duration of any office is not provided by this Constitution it may be de-

clared by law, and if not so declared, such office shall be held during the pleasure of the authority making the appointment.

[Section 3 of article X of the amended constitution of 1846, without change.]

When the duration is once declared by law the legislature cannot extend the term of the office so as to affect the present incumbent. (People ex rel. v. Bull, 46 N. Y. 57.)

Legislature may abridge the term of office either by express words or may specify an event upon the happening of which it shall end. (People ex rel. v. Whitlock, 92 N. Y. 191.)

When the power of appointment is conferred in general terms and without restriction the office is held only during the pleasure of the authority making the appointment. (People ex rel. v. Robb, 126 N. Y. 180.)

The provision that "such office shall be held during the pleasure of the authority making the appointment" applies only to an office that is continuous. (Bergen v. Powell, 94 N. Y. 591.)

The provision of this section that when the duration of an office is not declared by law, it shall be held during the pleasure of the authority making the appointment, relates only to the offices, the tenure of which continues and not to cases in which the power of appointment is exhausted when it is once exercised, or when the tenure is fixed by the statutes. (Jarvis v. Waterway, 84 Hun, 462.) (1895.)

Provision of second class city charter authorizing commissioner of public safety to remove policemen and that his decision shall be final and not reviewable, held constitutional; but such officer is entitled to have a substantial compliance with the statutory provisions as to trial and the power to remove cannot be exercised arbitrarily and without evidence to support it. (People v. Peck, 73 App. Div. 89.) (1902.)

The legislature may abridge the term of office or abolish an office created by an act of the legislature. Citing Coch v. Mayor, 152 N. Y. 72. (Matter of Lowman, 95 App. Div. 32.) (1904.)

The power of removal hereunder cannot be limited by any

rules of the civil service commission. (People v. Henry, 47 App. Div. 133.) (1900.)

Time of election.— § 4. The time of electing all officers named in this article shall be prescribed by law.

[Section 4 of article X of the amended constitution of 1846, without change.]

Vacancies in offices, how filled.— § 5. The Legislature shall provide for filling vacancies in office, and in case of elective officers, no person appointed to fill a vacancy shall hold his office by virtue of such appointment longer than the commencement of the political year next succeeding the first annual election after the happening of the vacancy.

[Section 5 of article X of the amended constitution of 1846, without change.]

This section relates only to offices which are certain and fixed as elective offices, not of those which may become so by act of legislature, and therefore does not refer to superintendents of the poor. (People ex rel. v. Comstock, 78 N. Y. 356. And see also People ex rel. v. Townsend, 102 id. 430, 439.)

A construction of the provisions of this section is contained in People v. Keeler, 17 N. Y. 370.

A person appointed to fill a vacancy in the office of supervisor prior to the annual election in an even-numbered year holds only until the close of that political year, notwithstanding a provision in the city charter that persons appointed to fill such vacancies shall hold until the end of an odd-numbered year. (People ex rel. Howard v. Supervisors of Erie, 42 App. Div. 510.) (1899.) (Affd., 160 N. Y. 687.) (1899.) (See People v. Scheu, 167 N. Y. 292.) (1901.)

This section applies only to constitutional officers as distinguished from those created by the legislature. (People v. Scheu, 167 N. Y. 292.) (1901.)

No valid appointment can be made except in case of a vacancy occurring otherwise than by expiration of the term. (People v. Dooley, 171 N. Y. 74.) (1902.)

Political year.— § 6. The political year and legislative term shall begin on the first day of January; and the Legislature shall every year, assemble on the first Wednesday in January.

[Section 6 of article X of the amended constitution of 1846, amended. The time of the assembling of the legislature is changed and made absolute.]

(For interpretation of this section, see People v. Supervisors of Monroe County 65 Hun, 263, 281.)

Removal from office for misconduct, etc.— § 7 Provision shall be made by law for the removal for misconduct or malversation in office of all officers, except judicial, whose powers and duties are not local or legislative and who shall be elected at general elections, and also for supplying vacancies created by such removal.

[Section 7 of article X of the amended constitution of 1846, without change.]

Office deemed vacant.— § 8. The Legislature may declare the cases in which any office shall be deemed vacant when no provision is made for that purpose in this constitution.

[Section 8 of article X of the amended constitution of 1846, without change.]

Compensation of officers.— § 9. No officer whose salary is fixed by the Constitution shall receive any additional compensation. Each of the other state officers named in the Constitution shall, during his continuance in office receive a compensation, to be fixed by law, which shall not be increased or diminished during the term for which he shall have been elected or appointed; nor shall he receive to his use any fees or perquisites of office or other compensation.

[Section 9 of article X of the amended constitution of 1846, without change.]

As to the meaning of word compensation as distinguished from "allowances." (Mangam v. City of Brooklyn, 98 N. Y. 585, 593.)

Compensation of statutory officers not protected by constitution may be increased or decreased by the legislature. (Matter of Mayor, etc., of N. Y., 33 App. Div. 365.) (1898.)

ARTICLE XI.

State militia.— Section 1. All able-bodied male citizens between the ages of eighteen and forty-five years, who are residents of the State, shall constitute the militia, subject, however, to such exemptions as are now, or may be hereafter created by the laws of the United States, or by the Legislature of this State.

[Section 1 of article XI of the amended constitution of 1846, amended.]

Enlistment.— § 2. The Legislature may provide for the enlistment into the active force of such other persons as may make application to be so enlisted.

[This provision is not contained in the amended constitution of 1846, although this power was impliedly granted therein.]

Organization of militia.— § 3. The militia shall be organized and divided into such land and naval, and active and reserve forces as the Legislature may deem proper, provided however that there shall be maintained at all times a force of not less than ten thousand enlisted men, fully uniformed, armed, equipped, disciplined and ready for active service. And it shall be the duty

of the Legislature at each session to make sufficient appropriation for the maintenance thereof.

[New in terms.]

Courts-martial are necessary incidents to the "discipline" of the state militia. (People ex rel. v. Daniell, 50 N. Y. 274.)

The provision of a law making the wages of armorers and janitors of armories a county charge, does not violate this section. (Yoedel v. Palmer, 5 App. Div. 86.) (1897.) (Bryant v. Palmer, 152 N. Y. 412.) (1897.)

Appointment of military officers by the Governor.— § 4. The Governor shall appoint the chiefs of the several staff departments, his aides-de-camp and military secretary, all of whom shall hold office during his pleasure, their commissions to expire with the term for which the Governor shall have been elected; he shall also nominate, and with the consent of the Senate appoint, all major-generals.

[The substance of this section is contained in section 3 of article XI of the amended constitution of 1846. A portion of such section is omitted.]

The governor has no power during the recess of the senate to appoint a major-general of the national guard to fill a vacancy. (People v. Molyneux, 40 N. Y. 113.)

Manner of election of military officers prescribed by Legislature.— § 5. All other commissioned and non-commissioned officers shall be chosen or appointed in such manner as the Legislature may deem most conducive to the improvement of the militia, provided, however, that no law shall be passed changing the existing mode of election and appointment unless two-thirds of the members present in each house shall concur therein.

[This section is a substitute for sections 4 and 6 of article XI of the amended constitution of 1846.]

Commissioned officers; their removal.— § 6. The commissioned officers shall be commissioned by the Governor as commander-in-chief. No commissioned officer shall be removed from office during the term for which he shall have been appointed or elected, unless by the Senate on the recommendation of the Governor, stating the grounds on which such removal is recommended, or by the sentence of a court-martial, or upon the findings of an examining board organized pursuant to law, or for absence without leave for a period of six months or more.

[Section 5 of article XI of the amended constitution of 1846, amended. The principal change is the removal of commissioned officers upon the findings of an examining board or for absence without leave.]

A commissioned officer, rendered supernumerary by the disbandment of a military company, pursuant to Military Code, is not removed from office within the meaning of this section. (People ex rel. v. Hill, 126 N. Y. 497; People ex rel. v. Ewen, 17 How. Pr. 375.)

ARTICLE XII.

Organization of cities and villages.— Section 1. It shall be the duty of the Legislature to provide for the organization of cities and incorporated villages, and to restrict their power of taxation, assessment, borrowing money, contracting debts, and loaning their credit, so as to prevent abuses in assessments and in contracting debt by such municipal corporations; and the Legislature may regulate and fix the wages or salaries, the hours of work or labor, and make provision for the protection, welfare and safety of persons employed by the state or by any county, city, town, village or other

civil division of the state, or by any contractor or subcontractor performing work, labor or services for the state, or for any county, city, town, village or other civil division thereof. [Amended by vote of People, Nov. 7, 1905.]

[Section 9 of article VIII of the amended constitution of 1846, without change.]

This provision is merely a direction to the legislature for the exercise of a power which had been restricted by former constitutions. (Bank of Chenango v. Brown, 26 N. Y. 467.)

This section authorizes the legislature to restrict the power of incurring indebtedness by municipal corporations, and the degree of such restriction is in the discretion of the legislature. (Sweet v. City of Syracuse, 129 N. Y. 316, 331.)

The legislature is not prohibited from authorizing a municipal corporation to incur an indebtedness of a new and unusual character. (Bank of Rome v. City of Rome, 18 N. Y. 38; Grant v. Courter, 24 Barb. 232; Benson v. Mayor of Albany, id. 248.)

By this section local legislative powers may be delegated to village and cities. (Consumers' Gas Co. v. Spring Co., 61 Hun, 135; Wallerstein v. Judge, 24 St. Rep. 814.)

The amendment of the labor law (L. 1906, chap. 506, § 3), that no workman employed on state or municipal work or by a contractor doing work for the state or a civil division thereof shall work more than eight hours in any one calendar day is a constitutional exercise of the legislative power. (People ex rel. W. E. & C. Co. v. Metz, 193 N. Y. 148.) (1908.) (Id., 194 N. Y. 145.) (1909.)

Classification of cities; general and special city laws; special city laws; how passed by Legislature and acceptance by cities.— § 2. All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand, or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand, the third class, all other cities.

Laws relating to the property, affairs of government of cities, and the several departments thereof, are divided into general and special city laws: general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any

such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be. [Amended by vote of People, Nov. 5, 1907.]

L. 1896, chap. 141, relating to special tax of foreign insurance companies in Long Island City, is a special city law. (See case for consideration of subject. Exempt Fireman Ass'n v. Trustees, 34 App. Div. 138.) (1898.)

The liquor tax law held not to be a city law. (People ex rel. Einsfeld v. Murray, 149 N. Y. 367.) (1896.)

A statute to enable an executrix to sue on a claim against the city of New York barred by the statute of limitations is a special city law and must be transmitted to the mayor. (Chrystal v. Mayor of New York, 63 App. Div. 93.) (1901.)

The provision requiring special city laws to be submitted to local authorities for action was designed to secure municipal independence as to purely city matters which do not interest the community outside and which might properly come within the jurisdiction of the local legislative power such as: 1. Streets and highways. 2. Parks and public places. 3. Sewers and water-works. 4. Character and structure of buildings as to safety and security and apparatus and means for preventing and extinguishing fires. 5. Salaries of city officers and employees. 6. Ward boundaries. 7. Taxes and assessments. 8. Organization and membership of common council. 9. Powers and duties of common council and city officers as to the subjects hereinbefore enumerated. It was never intended to interfere

with the sovereign power of the state to provide for the economical administration of a county office nor to prevent the imposing of a duty upon an officer of the municipality relating to the sovereign power of the state rather than the municipality. (McGrath v. Grout, 69 App. Div. 314.) (1902.)

Law providing for salaries of sheriff, register and county clerk of Kings county is not a special city bill. (McGrath v. Grout, 171 N. Y. 7.) (1902.)

Chapter 501, Laws of 1905, amending chapter 182, Laws of 1898, commonly known as the "White charter," for the government of cities of the second class held to be constitutional. (Koster v. Kayne, 184 N. Y. 494.) (1906.)

A law providing for interest on awards for damages sustained by reason of change of grade of a street or highway in the state is not a city law in any sense but a general law operating throughout the state. (People ex rel. Central Trust Co. v. Prendergast, 202 N. Y. 188.) (1911.)

Election of city officers, when to be held; extension and abridgment of terms.— § 3. All elections of city officers, including supervisors and judicial officers of inferior local courts, elected in any city or part of a city, and of county officers elected in the counties of New York and Kings, and in all counties whose boundaries are the same as those of a city, except to fill vacancies, shall be held on the Tuesday succeeding the first Monday in November in an odd-numbered year, and the term of every such officer shall expire at the end of an odd-numbered year. The terms of office of all such officers elected before the first day of January, one thousand eight hundred and ninety-five, whose successors have not then been elected, which under existing laws would expire with an even-numbered year, or in an odd-numbered year and before the end thereof, are extended to and including the last day of December next following the time when such terms would otherwise expire; the terms of office of all such officers, which un-

der existing laws would expire in an even-numbered year, and before the end thereof, are abridged so as to expire at the end of the preceding year. This section shall not apply to any city of the third class, or to elections, of any judicial officer, except judges and justices of inferior local courts.

[New.]

This section does not save the office of justice of the peace of Brooklyn from abridgment. (Murphy v. Snitzpan, 15 Misc. Rep. 496.)

As to supervisors appointed to fill vacancies in even-numbered year. (People ex rel. Howard v. Wende, 53 N. Y. Supp. 1039.)

ARTICLE XIII.

Oath of office.— Section 1. Members of the Legislature, and all officers executive and judicial, except such inferior officers as shall be by law exempted shall, before they enter on the duties of their respective offices, take and subscribe the following oath or affirmation: "I do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of ———, according to the best of my ability;" and all such officers who shall have been chosen at any election shall, before they enter on the duties of their respective offices, take and subscribe the oath or affirmation above prescribed, together with the following addition thereto, as part thereof:

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money, or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have

not made any promise to influence the giving or withholding any such vote," and no other oath, declaration or test shall be required as a qualification for any office of public trust.

[Section 1 of article XII of the amended constitution of 1846, without change.]

A statute which requires an applicant for appointment to position in a public office to show his fitness therefor is not an illegal test within the meaning of the provision of this section. (Rogers v. Common Council of City of Buffalo, 123 N. Y. 173.)

The excise commissioners' test oath required by section 3 of chapter 163 of the Laws of 1890 is repugnant to this section. (People ex rel. v. Palen, 74 Hun, 289.)

Provision of Penal Code providing for forfeiture of office upon failure to file statement of election expenses repugnant to this section. (Stryker v. Churchill, 39 Misc. Rep. 578.) (1903.)

The requirement in section 84 of the highway law that commissioners, appointed by the county court to determine upon the necessity of a proposed highway and assess damages, shall take constitutional oath of office as prescribed in section 1 of article XIII of the constitution, is mandatory of such commissioners. (Matter of David, 44 Misc. Rep. 192.) (1904.)

Official bribery and corruption.—§ 2. Any person holding office under the laws of this State who, except in payment of his legal salary, fees or perquisites, shall receive or consent to receive, directly or indirectly, anything of value or of personal advantage, or the promise thereof, for performing or omitting to perform any official act, or with the express or implied understanding that his official action or omission to act is to be in any degree influenced thereby, shall be deemed guilty of a felony. This section shall not affect the validity of any existing statute in relation to the offense of bribery.

[Section 1 of article XV of the amended constitution of 1846, without change.]

A subordinate in the district attorney's office of New York is a public officer, within the constitutional prohibition against extra compensation. (Merzbach v. Mayor, 19 App. Div. 186.) (1897.)

Offer or promise to bribe.—§ 3. Any person who shall offer or promise a bribe to an officer, if it shall be received, shall be deemed guilty of a felony and liable to punishment, except as herein provided. No person offering a bribe shall, upon any prosecution of the officer for receiving such bribe, be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor, if he shall testify to the giving or offering of such bribe. Any person who shall offer or promise a bribe, if it be rejected by the officer to whom it was tendered, shall be deemed guilty of an attempt to bribe, which is hereby declared to be a felony.

[Section 2 of article XV of the amended constitution of 1846, without change.]

Person bribed or offering a bribe may be a witness.—§ 4. Any person charged with receiving a bribe, or with offering or promising a bribe, shall be permitted to testify in his own behalf in any civil or criminal prosecution therefor.

[Section 3 of article XV of the amended constitution of 1846, without change.]

Free passes, franking privileges, etc., not to be received by public officers; penalty.—§ 5. No public officer, or person elected or appointed to a public office,

under the laws of this State, shall directly or indirectly ask, demand, accept, receive or consent to receive for his own use or benefit, or for the use or benefit of another, any free pass, free transportation, franking privilege or discrimination in passenger, telegraph or telephone rates, from any person or corporation, or make use of the same himself or in conjunction with another. A person who violates any provision of this section, shall be deemed guilty of a misdemeanor, and shall forfeit his office at the suit of the Attorney-General. Any corporation, or officer or agent thereof, who shall offer or promise to a public officer, or person elected or appointed to a public office, any such free pass, free transportation, franking privilege or discrimination shall also be deemed guilty of a misdemeanor and liable to punishment except as herein provided. No person, or officer or agent of a corporation, giving any such free pass, free transportation, franking privilege or discrimination hereby prohibited, shall be privileged from testifying in relation thereto, and he shall not be liable to civil or criminal prosecution therefor if he shall testify to the giving of the same.

[New.]

A notary public is a public officer. (People v. Rathbone, 145 N. Y. 434.) (1895.) A railroad commissioner is included in the inhibition, but he may use a pass issued by the secretary of state under L. 1882, chap. 353, § 169. (Matter of Bd. of R. R. Commissioners, 11 Misc. Rep. 103). A railroad policeman appointed under section 58 of the railroad law, is a public officer. (Dempsey v. N. Y. Central R. R. Co., 146 N. Y. 290.) (1895.)

A public officer is prohibited from accepting a palace or sleeping-car pass. (People v. Wadhams, 176 N. Y. 9.) (1903.)

Removal of district attorney for failure to prosecute; expenses of prosecutions for bribery.— § 6. Any district attorney who shall fail faithfully to prosecute a person charged with the violation in his county of any provision of this article which may come to his knowledge, shall be removed from office by the Governor, after due notice and an opportunity of being heard in his defense. The expenses which shall be incurred by any county, in investigating and prosecuting any charge of bribery or attempting to bribe any person holding office under the laws of this State within such county, or of receiving bribes by any such person in said county, shall be a charge against the State, and their payment by the State shall be provided for by law.

[Section 4 of article XV of the amended constitution of 1846, without change.]

This section only refers to investigations in bribery proceedings, and an act providing that all the costs and expenses of an investigation of charges against a county officer be borne by the county is not contrary thereto. (People ex rel. v. Supervisors, 39 Hun, 442.)

ARTICLE XIV.

Amendments to Constitution, how proposed, voted upon and ratified.— Section 1. Any amendment or amendments to this Constitution may be proposed in the Senate and Assembly; and if the same shall be agreed to by a majority of the members elected to each of the

two houses, such proposed amendment or amendments shall be entered on their journals, and the yeas and nays taken thereon, and referred to the Legislature to be chosen at the next general election of senators, and shall be published for three months previous to the time of making such choice; and if in the Legislature so next chosen, as aforesaid, such proposed amendment or amendments shall be agreed to by a majority of all the members elected to each house, then it shall be the duty of the Legislature to submit each proposed amendment or amendments to the people for approval in such manner and at such times as the Legislature shall prescribe; and if the people shall approve and ratify such amendment or amendments by a majority of the electors voting thereon, such amendment or amendments shall become a part of the Constitution from and after the first day of January next after such approval.

[Section 1 of article XIII of the amended constitution of 1846, amended.]

Future constitutional conventions; how called; election of delegates; compensation; quorum; submission of amendments; officers; rules; vacancies; taking effect.— § 2. At the general election to be held in the year one thousand nine hundred and sixteen, and every twentieth year thereafter, and also at such times as the Legislature may by law provide, the question, "Shall there be a convention to revise the Constitution and amend the same?" shall be decided by the electors of the State; and in case a majority of the electors voting thereon shall decide in favor of a convention for such

purpose, the electors of every senate district of the State, as then organized, shall elect three delegates at the next ensuing general election at which members of the Assembly shall be chosen, and the electors of the State voting at the same election shall elect fifteen delegates-at-large. The delegates so elected shall convene at the capitol on the first Tuesday of April next ensuing after their election, and shall continue their session until the business of such convention shall have been completed. Every delegate shall receive for his services the same compensation and the same mileage as shall then be annually payable to the members of the Assembly. A majority of the convention shall constitute a quorum for the transaction of business, and no amendment to the Constitution shall be submitted for approval to the electors as hereinafter provided, unless by the assent of a majority of all the delegates elected to the convention, the yeas and nays being entered on the journal to be kept. The convention shall have the power to appoint such officers, employés and assistants as it may deem necessary, and fix their compensation and to provide for the printing of its documents, journal and proceedings. The convention shall determine the rules of its own proceedings, choose its own officers, and be the judge of the election, returns and qualifications of its members. In case of a vacancy, by death, resignation or other cause, of any district delegate elected to the convention, such vacancy shall be filled by a vote of the remaining delegates representing the district in which such vacancy occurs. If such vacancy occurs in the office of a delegate-at-large, such vacancy

shall be filled by a vote of the remaining delegates-at-large. Any proposed constitution or constitutional amendment which shall have been adopted by such convention, shall be submitted to a vote of the electors of the State at the time and in the manner provided by such convention, at an election which shall be held not less than six weeks after the adjournment of such convention. Upon the approval of such constitution or constitutional amendments, in the manner provided in the last preceding section, such constitution or constitutional amendment, shall go into effect on the first day of January next after such approval.

[The part of this section relating to the calling of future conventions is substantially the same as section 2 of article XIII of the amended constitution of 1846. The remainder of the section is new.]

Amendments of convention and Legislature submitted coincidently.— § 3. Any amendment proposed by a constitutional convention relating to the same subject as an amendment proposed by the Legislature, coincidently submitted to the people for approval at the general election held in the year one thousand eight hundred and ninety-four, or at any subsequent election, shall, if approved, be deemed to supersede the amendment so proposed by the legislature.

[New.]

ARTICLE XV.

Time of taking effect.— Section 1. This Constitution shall be in force from and including the first day of

January, one thousand eight hundred and ninety-five, except as herein otherwise provided.

Done in Convention at the Capitol in the city of Albany, the twenty-ninth day of September, in the year one thousand eight hundred and ninety-four, and of the Independence of the United States of America the one hundred and nineteenth.

In witness whereof, we have hereunto subscribed our names.

JOSEPH HODGES CHOATE,
President and Delegate-at-Large.

CHARLES ELLIOTT FITCH,
Secretary.

SCHEDULE SHOWING SOURCES OF SECTIONS OF THE NEW YORK STATE CONSTITUTION OF 1894.

Constitution of 1894.		Constitution of 1846, amended.	
Art. I, § 1.....	Art.	I, § 1.	
I, 2.....		I, 2.	
I, 3.....		I, 3.	
I, 4.....		I, 4.	
I, 5.....		I, 5.	
I, 6.....		I, 6.	
I, 7.....		I, 7, amended.	
I, 8.....		I, 8.	
I, 9.....		I, 10, amended.	
I, 10.....		I, 11.	
I, 11.....		I, 12.	
I, 12.....		I, 13.	
I, 13.....		I, 14.	
I, 14.....		I, 15.	
I, 15.....		I, 16.	
I, 16.....		I, 17, amended.	
I, 17.....		I, 18.	
I, 18.....	New.		
II, 1.....	Art.	II, 1, amended.	
II, 2.....		II, 2, amended in language.	
II, 3.....		II, 3, amended.	
II, 4.....		II, 4, amended.	
II, 5.....		II, 5, amended.	
II, 6.....	New.		
III, 1.....	Art.	III, 1.	
III, 2.....	New.	Superseding art. III, § 2.	
III, 3.....	New.	" III, 3.	
III, 4.....	New.	" III, 4.	
III, 5.....	New.	" III, 5.	
III, 6.....	Art.	III, 6.	
III, 7.....		III, 7.	
III, 8.....		III, 8.	
III, 9.....		III, 9.	
III, 10.....		III, 10, amended.	
III, 11.....		III, 11.	
III, 12.....		III, 12.	
III, 13.....		III, 13.	
III, 14.....		III, 14.	
III, 15.....		III, 15, amended.	
III, 16.....		III, 16.	
III, 17.....		III, 17.	
III, 18.....		III, 18, amended in language.	
III, 19.....		III, 19.	
III, 20.....		I, 9.	
III, 21.....		VII, 8.	

Constitution of 1894.		Constitution of 1846, amended.	
Art. III,	22.....	New.	
III,	23.....	Art. III,	25.
III,	24.....	III,	20.
III,	25.....	III,	21.
III,	26.....	III,	22.
III,	27.....	III,	23.
III,	28.....	III,	24.
III,	29.....	New.	
IV,	1.....	Art. IV,	1, amended.
IV,	2.....	IV,	2.
IV,	3.....	IV,	3.
IV,	4.....	IV,	4.
IV,	5.....	IV,	5.
IV,	6.....	IV,	6.
IV,	7.....	IV,	7, amended.
IV,	8.....	IV,	8.
IV,	9.....	IV,	9.
V,	1.....	V,	1, amended.
V,	2.....	New.	
V,	3.....	Art. V,	3, amended in language.
V,	4.....	V,	4, amended in language.
V,	5.....	V,	5, amended in language.
V,	6.....	V,	6.
V,	7.....	V,	7.
V,	8.....	V,	8.
V,	9.....	New.	
VI,	1.....	Partly new, superseding art. VI, § 6.	
VI,	2.....	Mostly new, superseding art. VI, §§ 7 and 28.	
VI,	3.....	Art. VI,	§ 8, amended.
VI,	4.....	VI,	§ 9, amended.
VI,	5.....	New. Repealing art. VI, § 12.	
VI,	6.....	New.	
VI,	7.....	Art. VI,	§ 2, amended.
VI,	8.....	VI,	3, amended.
VI,	9.....	New.	
VI,	10.....	Art. VI,	§ 10
VI,	11.....	VI,	11, amended.
VI,	12.....	Partly new, superseding art. VI, §§ 13 and 14	
VI,	13.....	Art. VI,	§ 1
VI,	14.....	VI,	15, amended.
VI,	15.....	Partly new, and see art. VI, § 15.	
VI,	16.....	Art. VI,	§ 16, amended.
VI,	17.....	VI,	18, amended.
VI,	18.....	VI,	19, amended.
VI,	19.....	VI,	20, amended.
VI,	20.....	Partly new, superseding art VI, § 21.	
VI,	21.....	Art. VI,	§ 23, amended.
VI,	22.....	VI,	25, amended.
VI,	23.....	VI,	26.
VII,	1.....	VII,	9.
VII,	2.....	VII,	10.

Constitution of 1894.		Constitution of 1846, amended.	
Art. VII,	3.	VII,	11.
VII,	4.....	VII,	12, amended in language.
VII,	5.....	VII,	13.
VII,	6.	VII,	14, amended.
VII,	7..... New.		
VII,	8..... Art.	VII,	6, amended.
VII,	9.....	VII,	3, amended.
VII,	10..... New.		
VIII,	1..... Art.	VIII,	1.
VIII,	2.....	VIII,	2.
VIII,	3.....	VIII,	3.
VIII,	4.....	VIII,	4.
VIII,	5.....	VIII,	5.
VIII,	6.....	VIII,	6.
VIII,	7.....	VIII,	7, amended.
VIII,	8.....	VIII,	8.
VIII,	9.....	VIII,	10.
VIII,	10.....	VIII,	11, amended.
VIII,	11-15.... New.		
IX,	1..... New.		
IX,	2..... New.		
IX,	3..... Art.	IX,	1.
IX,	4..... New.		
X,	1..... Art.	X,	1, amended.
X,	2.....	X,	2.
X,	3.....	X,	3.
X,	4.....	X,	4.
X,	5.....	X,	5.
X,	6.....	X,	6, amended.
X,	7.....	X,	7.
X,	8.....	X,	8.
X,	9.....	X,	9.
XI,	1.....	XI,	1, amended.
XI,	2.....	XI,	2, amended.
XI,	3.....	XI,	3, amended.
XI,	4.....	XI,	4, amended.
XI,	5.....	XI,	5, amended.
XI,	6.....	XI,	6, amended.
XII,	1.....	VIII,	9.
XII,	2..... New.		
XII,	3..... New.		
XIII,	1..... Art.	XII,	1.
XIII,	2.....	XV,	1.
XIII,	3.....	XV,	2.
XIII,	4.....	XV,	3.
XIII,	5..... New.		
XIII,	6..... Art.	XV,	4.
XIV,	1.....	XIII,	1, amended.
XIV,	2.....	XIII,	2, amended.
XIV,	3..... New.		
XV,	1..... Art.	XIV,	13.

SCHEDULE SHOWING DISPOSITION OF SECTIONS OF THE NEW YORK STATE CONSTITUTION OF 1846, AMENDED.

Constitution of 1846, amended.				Constitution of 1894.		
Art.	I,	§ 1.....	Re-enacted in	Art.	I,	§ 1.
	I,	2.....	"		I,	2.
	I,	3.....	"		I,	3.
	I,	4.....	"		I,	4.
	I,	5.....	"		I,	5.
	I,	6.....	"		I,	6.
	I,	7.....	Amended by		I,	7.
	I,	8.....	Re-enacted in		I,	8.
	I,	9.....	"		III,	20.
	I,	10.....	Amended by		I,	9.
	I,	11.....	Re-enacted in		I,	10.
	I,	12.....	"		I,	11.
	I,	13.....	"		I,	12.
	I,	14.....	"		I,	13.
	I,	15.....	"		I,	14.
	I,	16.....	"		I,	15.
	I,	17.....	Amended by		I,	16.
	I,	18.....	Re-enacted in		I,	17.
	II,	1.....	Amended by		II,	1.
	II,	2.....	"		II,	2.
	II,	3.....	"		II,	3.
	II,	4.....	"		II,	4.
	II,	5.....	"		II,	5.
	III,	1.....	Re-enacted in		III,	1.
	III,	2.....	Superseded by		III,	2.
	III,	3.....	"		III,	3.
	III,	4.....	"		III,	4.
	III,	5.....	"		III,	5.
	III,	6.....	Re-enacted in		III,	6.
	III,	7.....	"		III,	7.
	III,	8.....	"		III,	8.
	III,	9.....	"		III,	9.
	III,	10.....	Amended by		III,	10,
	III,	11.....	Re-enacted in		III,	11.
	III,	12.....	"		III,	12.
	III,	13.....	"		III,	13.
	III,	14.....	"		III,	14.
	III,	15.....	Amended by		III,	15.
	III,	16.....	Re-enacted in		III,	16.
	III,	17.....	"		III,	17.
	III,	18.....	Amended by		III,	18.
	III,	19.....	Re-enacted in		III,	19.
	III,	20.....	"		III,	24.
	III,	21.....	"		III,	25.
	III,	22.....	"		III,	26.

Constitution of 1846, amended.			Constitution of 1894.	
Art. III,	23.....	Re-enacted in Art.	III,	27.
III,	24.....	"	III,	28.
III,	25.....	"	III,	23.
IV,	1.....	Amended by	IV,	1.
IV,	2.....	Re-enacted in	IV,	2.
IV,	3.....	"	IV,	3.
IV,	4.....	"	IV,	4.
IV,	5.....	"	IV,	5.
IV,	6.....	"	IV,	6.
IV,	7.....	Amended by	IV,	7.
IV,	8.....	Re-enacted in	IV,	8.
IV,	9.....	"	IV,	9.
V,	1.....	Amended by	V,	1.
V,	2.....	"	V,	1, 2.
V,	3.....	Amended in language,	Art. V,	§ 3.
V,	4.....	" "	Art. V,	§ 4.
V,	5.....	" "	Art. V,	§ 5.
V,	6.....	Re-enacted in Art.	V,	§ 6.
V,	7.....	"	V,	7.
V,	8.....	"	V,	8.
VI,	1.....	"	VI,	13.
VI,	2.....	Amended by	VI,	7.
VI,	3.....	"	VI,	8.
VI,	4.....	(Causes referred to commissioners of appeals.) Abrogated.		
VI,	5.....	(Commissioners of appeals.)	Abrogated.	
VI,	6.....	Superseded by Art.	VI,	§ 1.
VI,	7.....	"	VI,	2.
VI,	8.....	Amended by	VI,	3.
VI,	9.....	"	VI,	4.
VI,	10.....	Re-enacted in	VI,	10.
VI,	11.....	Amended by	VI,	11.
VI,	12.....	(City courts) repealed by Art.	VI,	§ 5.
VI,	13.....	Superseded by Art.	VI,	§ 12.
VI,	14.....	"	VI,	12.
VI,	15.....	Amended by	VI,	14.
VI,	16.....	"	VI,	16.
VI,	17.....	(Question of election or appointment of judges.) Abrogated.		
VI,	18.....	Amended by Art.	VI,	§ 17.
VI,	19.....	"	VI,	18.
VI,	20.....	"	VI,	19.
VI,	21.....	Superseded by	VI,	20.
VI,	22.....	"	VI,	9.
VI,	23.....	Amended by	VI,	21.
VI,	24.....	(First election of judges.)	Abrogated.	
VI,	25.....	Amended by Art.	VI,	§ 22.
VI,	26.....	Re-enacted in	VI,	23.
VII,	1.....	(Canal debt, etc.)	Abrogated.	
VII,	2.....	(General fund debt, etc.)	Abrogated.	

Constitution of 1846, amended.		Constitution of 1894.
Art. VII,	3.....	Amended by Art. VII, § 9.
VII,	4.....	(Loans to incorporated companies.) Abrogated.
VII,	5.....	(Provisions for payment of canal debt.) Abrogated.
VII,	6.....	Re-enacted in Art. VII § 8.
VII,	7.....	(Salt springs.) Abrogated.
VII,	8.....	Re-enacted in Art. III, § 21.
VII,	9.....	" VII, 1.
VII,	10.....	" VII, 2.
VII,	11.....	" VII, 3.
VII,	12.....	Amended in language Art 8, § 4.
VII,	13.....	Re-enacted in Art VII, § 5.
VII,	14.....	Amended by VII, 6.
VIII,	1.....	Re-enacted in VIII, 1.
VIII,	2.....	" VIII, 2.
VIII,	3.....	" VIII, 3.
VIII,	4.....	" VIII, 4.
VIII,	5.....	" VIII, 5.
VIII,	6.....	" VIII, 6.
VIII,	7.....	Amended by VIII, 7.
VIII,	8.....	Re-enacted in VIII, 8.
VIII,	9.....	" XII, 1.
VIII,	10.....	" VIII, 9.
VIII,	11.....	" VIII, 10.
IX,	1.....	" IX, 3.
X,	1.....	Amended by X, 1.
X,	2.....	Re enacted in X, 2.
X,	3.....	" X, 3.
X,	4.....	" X, 4.
X,	5.....	" X, 5.
X,	6.....	Amended by X, 6.
X,	7.....	Re-enacted in X, 7.
X,	8.....	" X, 8.
X,	9.....	" X, 9.
XI,	1.....	Superseded by XI, 1.
XI,	2.....	" XI, 5.
XI,	3.....	Amended by XI, 4.
XI,	4.....	" XI, 5.
XI,	5.....	" XI, 6.
XI,	6.....	Superseded by XI, 5.
XII,	1.....	Re-enacted in XIII, 1.
XIII,	1.....	Amended by XIV, 1.
XIII,	2.....	" XIV, 2.
XIV,	1.....	(First election of senators, etc.) Abrogated.
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XIV,	5.....	(Pending suits.) Abrogated.

Constitution of 1846, amended.		Constitution of 1894.	
Art. XIV,	6	(Masters in chancery.) Abrogated.	
XIV,	7.....	(Vacancy in office of chancellor.) Abrogated.	
XIV,	8.....	(Offices abolished.) Abrogated.	
XIV,	9.....	(Chancellors and justices eligible.) Abrogated.	
XIV,	10.....	(Expiration of term.) Abrogated.	
XIV,	11.....	(Judicial officers may take fees.) Abrogated.	
XIV,	12.....	(Local courts) Abrogated.	
XIV,	13.....	Amended by Art.	XV, 1.
XV,	1.....	Re enacted in	XIII, 2.
XV,	2.....	"	X II, 3.
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CITY BILLS.

Provisions of Constitution and General City Law Relating thereto.

Constitution, Article XII.

§ 2. All cities are classified according to the latest state enumeration, as from time to time made, as follows: The first class includes all cities having a population of one hundred and seventy-five thousand, or more; the second class, all cities having a population of fifty thousand and less than one hundred and seventy-five thousand; the third class, all other cities. Laws relating to the property, affairs of government of cities, and the several departments thereof, are divided into general and special city laws; general city laws are those which relate to all the cities of one or more classes; special city laws are those which relate to a single city, or to less than all the cities of a class. Special city laws shall not be passed except in conformity with the provisions of this section. After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the house in which it originated shall immediately transmit a certified copy thereof to the mayor of such city, and within fifteen days thereafter the mayor shall return such bill to the house from which it was sent, or if the session of the

Legislature at which such bill was passed has terminated, to the Governor, with the mayor's certificate thereon, stating whether the city has or has not accepted the same. In every city of the first class, the mayor, and in every other city, the mayor and the legislative body thereof concurrently, shall act for such city as to such bill; but the Legislature may provide for the concurrence of the legislative body in cities of the first class. The Legislature shall provide for a public notice and opportunity for a public hearing concerning any such bill in every city to which it relates, before action thereon. Such a bill, if it relates, to more than one city, shall be transmitted to the mayor of each city to which it relates, and shall not be deemed accepted unless accepted as herein provided, by every such city. Whenever any such bill is accepted as herein provided, it shall be subject as are other bills, to the action of the Governor. Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor. In every special city law which has been accepted by the city or cities to which it relates, the title shall be followed by the words "accepted by the city," or "cities," as the case may be; in every such law which is passed without such acceptance, by the words "passed without the acceptance of the city," or "cities," as the case may be.

THE GENERAL CITY LAW.

Chap. 26, Laws of 1909.

AN ACT in relation to cities, constituting chapter twenty-one of the consolidated laws.

ARTICLE III.

Hearing on City Bills.

Section 30. Public hearing.
31. Notice, how given.
32. Hearing.
33. Return by mayor; contents of certificate.
34. Duties of clerk on return of mayor's certificate; indorsement on bill.
35. Expenses of hearing to be a city charge.

§ 30. **Public hearing.**— Whenever a certified copy of any bill for a special city law shall be transmitted to the mayor of a city, pursuant to the provisions of the second section of the twelfth article of the constitution of this state, the mayor of such city shall forthwith upon the receipt of such bill fix a day for a public hearing in such city concerning such bill, and cause public notice of the time and place of such hearing to be given. In a city of the first class such hearing shall be before the mayor. In a city of the second or third class, such hearing shall be before the mayor and the legislative body of such city.

§ 31. **Notice, how given.**— In a city of the first class such notice shall be given by the mayor by causing

such notice to be published for two successive days in two daily newspapers published in such city to be designated by him. In a city of the second class, or of the third class in which a daily newspaper is published, such notice shall be given by the mayor by causing such notice to be published for three successive days in a daily newspaper published in such city to be designated by him. In a city of the third class, in which no daily newspaper is published, such notice shall be given by the mayor by causing such notice to be published one or more times in a weekly, semi-weekly or tri-weekly newspaper published in such city, to be designated by him, at least three days prior to the day fixed for such hearing, and in a city of the second or third class, he shall also cause a copy of such notice to be served upon each member of the legislative body of such city, either personally or by mail at least two days before the day fixed for such public hearing. Such notice shall also contain the title of the bill and any explanatory statement concerning the same which the mayor shall deem advisable.

§ 32. **Hearing.**— In a city of the first class, the mayor, and in a city of the second or third class the mayor and the legislative body of such city, shall attend at the time and place appointed for such hearing, and shall afford an opportunity for a public hearing concerning such bill.

§ 33. **Return by mayor; contents of certificate.**— After such hearing and withing fifteen days after the transmission to him of a certified copy of such bill,

the mayor shall return the same to the house from which it was sent, or, if the session of the legislature at which such bill was passed has terminated, to the governor with the proper certificates attached, stating whether such city has or has not accepted the same. In a city of the first class such certificate shall be signed by the mayor. In a city of the second or third class such certificate shall be signed by the mayor and by the presiding officer of the legislative body of such city, and such bill shall not be deemed to have been accepted by such city, unless the mayor and a majority of the legislative body shall concur in such acceptance. The mayor shall also append to the certified copy of such bill a further certificate stating that the public notice provided for has been given, and if in a city of the second or third class, that a meeting of the legislative body has been held pursuant thereto, and that an opportunity for a public hearing concerning such bill has been offered pursuant to the provisions of the preceding sections, and such certificate shall be conclusive evidence thereof. Each certificate required under this section shall be under the seal of the city.

§ 34. **Duties of clerk on return of mayor's certificate; indorsement on bill.**— The clerk of the house in which such bill originated shall indorse upon the original bill to be presented to the governor, and upon the certified copy thereof to be transmitted to the mayor, the date of such transmission. Such clerk, if the certified copy of such bill is returned to the house in which the bill originated, or the governor, if such certified copy is

returned to him, shall indorse the date of such return upon such original bill and also upon such certified copy thereof. In every case in which a bill for a special city law has been accepted by the city or cities to which it relates, the certified copy or copies thereof transmitted to the mayor or mayors of such city or cities and returned by him or them, with the certificates indorsed thereon or appended thereto, shall be attached to the original bill and presented therewith to the governor.

§ 35. **Expenses of hearing to be a city charge.**— The necessary expenses incurred by a city in complying with the requirements of this article shall be a city charge and shall be paid out of any fund or appropriation applicable thereto.

SENATE AND ASSEMBLY REAPPORTIONMENT LAW.

CHAP. 59, LAWS OF 1909.

AN ACT in relation to the sovereignty, boundaries, survey, great seal and arms of the state, congressional districts, senate districts, and apportionment of the members of assembly of this state, and enumeration of the inhabitants of the state, constituting chapter fifty-seven of the consolidated laws.

Section 120. The senate districts of this state, from and after July twenty-fifth, nineteen hundred and seven, shall consist as follows:

1. The first senate district shall consist of the counties of Suffolk and Nassau.

2. The second senate district shall consist of the county of Queens.

3. The third senate district shall consist of that part of the county of Kings within and bounded by a line beginning at Washington avenue and Wallabout canal, and running thence along Washington avenue to Flushing avenue, to Hall street, to Park avenue, to Carlton avenue, to Myrtle avenue, to Washington park, to DeKalb avenue, to Navy street, to Rockwell place, to Fulton street, to Hudson avenue, to Flatbush avenue, to Fourth avenue, to Bergen street, to Court street, to Third place, to Clinton street, to Huntington street, to Henry street, to Mill street, to Columbia street, to Gowanus bay, and thence around the westerly side along the waters of Gowanus bay, Buttermilk channel and the East river to the place of beginning.

4. The fourth senate district shall consist of that part of the county of Kings lying northeast of senate district

number three and within and bounded by a line beginning at the Wallabout canal and running thence along Washington avenue to Flushing avenue, to Hall street, to Park avenue, to Skillman street, to Willoughby avenue, to Bedford avenue, to Lafayette avenue, to Lewis avenue, to McDonough street, to Tompkins avenue, to Fulton street, to Patchen avenue, to Sumpter street, to Howard avenue, to Marion street, to Rockaway avenue, to Broadway, to Flushing avenue, to Tompkins avenue, to Harrison avenue, to Hooper street, to Broadway, to Rodney street, to South First street, to Marcy avenue, to South Second street, to Havemeyer street, to Broadway, to South Sixth street, to Berry street, to Broadway, to the East river, to Wallabout bay, to Wallabout channel, to Wallabout canal, to the place of beginning.

5. The fifth senate district shall consist of that part of the county of Kings lying southeasterly of senate district number three and within and bounded by a line beginning at Gowanus bay and Columbia street and running thence along Columbia street to Mill street, to Henry street, to Huntington street, to Clinton street, to Third place, to Court street, to Bergen street, to Fourth avenue, to Wyckoff street, to Saint Mark's place, to Fifth avenue, to Garfield place, to Fourth avenue, to Prospect avenue, to Eleventh avenue, to Terrace place, to Gravesend avenue, to Fort Hamilton parkway, to Thirty-seventh street, to Tenth avenue, to Thirty-ninth street, to Twelfth avenue, to Fortieth street, to Thirteenth avenue, to Fifty-eighth street, to Twelfth avenue, to Sixtieth street, to Thirteenth avenue, to Seventy-ninth street, to Fourteenth avenue, to Benson avenue, to Bay Seventh street, to Cropsey avenue,

to Bay Eighth street, to Gravesend bay, and thence along the waters of the Gravesend bay, the Narrows and Gowanus bay, to the place of beginning.

6. The sixth senate district shall consist of that part of the county of Kings lying northeast of senate district number five and within and bounded by a line beginning at the intersection of Prospect avenue and Fourth avenue and running thence along Fourth avenue to Garfield place, to Fifth avenue, to Saint Mark's avenue, to Saint Mark's place, to Fourth avenue, to Flatbush avenue, to Fulton street, to Rockwell place, to DeKalb avenue, to Washington park, to Myrtle avenue, to Carlton avenue, to Park avenue, to Skillman street, to Willoughby avenue, to Bedford avenue, to Carroll street, to Franklin avenue, to Montgomery street, to Washington avenue, and thence along the easterly and southerly side of the Institute park to Flatbush avenue and thence along the easterly, southerly and westerly sides of Prospect park to Eleventh avenue, to Prospect avenue and thence along Prospect avenue to the place of beginning.

7. The seventh senate district shall consist of that part of the county of Kings lying northeast of senate district number four and within and bounded by a line beginning at the East river and Broadway and running thence along Broadway to Berry street, to South Sixth street, to Broadway, to Havemeyer street, to South Second street, to Marcy avenue, to South First street, to Rodney street, to South Second street, to Union avenue, to Ten Eyck street, to Bushwick avenue, to Montrose avenue, to Bushwick place, to Boerum street, to White street, to Cook street, to Bushwick avenue, to

Flushing avenue, to Central avenue, to Forrest street, to Morgan avenue, to Noll street, to Flushing avenue, to Knickerbocker avenue, to Melrose street, to Flushing avenue, and thence along Flushing avenue to the dividing line between Kings and Queens counties, and thence along the dividing line between Kings and Queens counties to Newtown creek, and thence along the waters of Newtown creek and the East river to the place of beginning.

8. The eighth senate district shall consist of that part of the county of Kings lying northeast of senate district number five and within and bounded by a line beginning at Bay Eighth street and Gravesend bay and running thence along Bay Eighth street to Cropsey avenue, to Bay Seventh street, to Benson avenue, to Fourteenth avenue, to Seventy-ninth street, to Thirteenth avenue, to Sixtieth street, to Twelfth avenue, to Fifty-eighth street, to Thirteenth avenue, to Fortieth street, to Twelfth avenue, to Thirty-ninth street, to Tenth avenue, to Thirty-seventh street, to Fort Hamilton avenue, to Gravesend avenue, to Terrace place, to Eleventh avenue, to Fifteenth street, to Coney Island avenue, thence around the southerly and easterly sides of Prospect park, to Flatbush avenue, to the southerly side of Institute park, to Washington avenue, to Montgomery street, to Franklin avenue, to Carroll street, to Bedford avenue, to Lafayette avenue, to Lewis avenue, to McDonough street, to Tompkins avenue, to Fulton street, to Schenectady avenue, to Pacific street, to Utica avenue, to East Broadway, formerly known as Church avenue, to East Forty-ninth street, to Grant street, to Schenectady

avenue, to Flatbush avenue, to Avenue R, to Burnett street, to Garrettson's mill pond and thence along the waters of Garrettson's creek, Sheepshead bay, the Atlantic ocean and Gravesend bay to the place of beginning.

9. The ninth senate district shall consist of that part of the county of Kings lying northeast of senate district number four and within and bounded by a line beginning at the dividing line between Kings and Queens counties at Flushing avenue and thence along Flushing avenue to Melrose street, to Knickerbocker avenue, thence to Flushing avenue, to Noll street, to Hamburg avenue, to Forrest street, to Flushing avenue, to Bushwick avenue, to Cook street, to White street, to Boerum street, to Bushwick place, to Montrose avenue, to Bushwick avenue, to Ten Eyck street, to Union avenue, to South Second street, to Rodney street, to Broadway, to Hooper street, to Harrison avenue, to Flushing avenue, to Broadway, to Moffat street, to Evergreen avenue, to Hancock street, to Central avenue, to Linden street, to Wyckoff avenue, to Ralph street, to Saint Nicholas avenue, to Bleecker street, to the dividing line between Kings and Queens counties and thence along said dividing line to the place of beginning.

10. The tenth senate district shall consist of that part of the county of Kings lying southeast of senate district number nine and within and bounded by a line beginning at the dividing line between Kings and Queens counties at Bleecker street and running thence along Bleecker street to Saint Nicholas avenue, to Ralph street, to Wyckoff avenue, to Linden street, to Central avenue, to Hancock street, to Evergreen avenue, to

Moffat street, to Broadway, to Rockaway avenue, to Marion street, to Howard avenue, to Sumpter street, to Patchen avenue, to Fulton street, to Schenectady avenue, to Pacific street, to Utica avenue, to East Broadway, formerly known as Church street, to East Forty-ninth street, to Grant street, to Schenectady avenue, to Flatbush avenue, to Avenue R, to Burnett street, to Garrettson's mill pond and thence along the waters of Garrettson's creek and Dead Horse inlet, thence, in a southerly direction in the waters of Jamaica bay south of Barren island, to the boundary line between Kings and Queens counties and thence along said boundary line to the place of beginning.

11. The eleventh senate district shall consist of that part of the county of New York within and bounded by a line beginning at Whitehall street and the East river and running thence along Whitehall street, Broadway, Beaver street, William street, North William street, Park Row, East Broadway, Catherine street, Division street, Chrystie street, Stanton street to the East river, thence along the East river to the place of beginning.

12. The twelfth senate district shall consist of that part of the county of New York lying north of district number eleven, and within and bounded by a line beginning at the East river and Stanton street, and running thence along Stanton street, Chrystie street, Division street, Catherine street, East Broadway, Chatham square, Worth street, Broadway, Great Jones street, Lafayette street, Astor place, Fourth avenue, East Fourteenth street, Avenue A, East Tenth street, Avenue D, East Eighth street to the East river, and thence along the East river to the place of beginning.

13. The thirteenth senate district shall consist of that part of the county of New York within and bounded by a line beginning at Whitehall street and the East river, thence along Whitehall street, Broadway, Beaver street, William street, North William street, Park Row, Worth street, Broadway, West Third street, Sixth avenue, West Washington place, West Fourth street, Chrisopher street, Bleecker street, Eighth avenue, West Fourteenth street, Seventh avenue, West Twenty-second street, Eighth avenue, West Twenty-fifth street, Seventh avenue, West Thirty-first street, Ninth avenue, West Thirty-second street, Tenth avenue, West Thirtieth street to the Hudson river, and thence along the Hudson river to the place of beginning; also Governor's, Bedloe's and Ellis islands.

14. The fourteenth senate district shall consist of that part of the county of New York lying north of district number twelve and within and bounded by a line beginning at the East river at the foot of East Eighth street, and running thence along East Eighth street, Avenue D, East Tenth street, Avenue A, East Fourteenth street, Irving place, East Fifteenth street, Third avenue, East Twenty-third street, Lexington avenue, East Thirty-fourth street, Third avenue, East Fortieth street, Lexington avenue, East Fifty-sixth street, to the East river, thence along the East river to the place of beginning, and also Blackwell's island.

15. The fifteenth senate district shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the foot of West Thirtieth street and the Hudson river, and running thence along West Thirtieth

street, Tenth avenue, West Thirty-second street, Ninth avenue, West Thirty-first street, Seventh avenue, West Thirty-eighth street, Eighth avenue, West Fifty-seventh street, Ninth avenue, Columbus avenue, West Sixty-fourth street, Amsterdam avenue, West Sixty-seventh street to the Hudson river, and thence along the Hudson river to the place of beginning.

16. The sixteenth senate district shall consist of that part of the county of New York lying north of district number fourteen, and within and bounded by a line beginning at East Fifty-sixth street and the East river, and running thence along East Fifty-sixth street, Third avenue, East Sixty-ninth street, Lexington avenue, East Seventieth street, Third avenue, East Seventy-fourth street, Lexington avenue, East Eighty-eighth street, Second avenue, East Ninety-first street, First avenue, East Ninety-second street to the East river, and thence along the East river to the place of beginning.

17. The seventeenth senate district shall consist of that part of the county of New York lying north of district number thirteen, and within and bounded by a line beginning at the junction of West Third street and Sixth avenue, running thence along Sixth avenue to West Washington place, West Fourth street, Christopher street, Bleecker street, Eighth avenue, West Fourteenth street, Seventh avenue, West Twenty-second street, Eighth avenue, West Twenty-fifth street, Seventh avenue, West Thirty-eighth street, Eighth avenue, West Fifty-seventh street, Ninth avenue, Columbus avenue, West Sixty-seventh street, Central Park West, Ninety-seventh street Transverse road, Fifth avenue, East Ninety-sixth

street, Lexington avenue, East Seventy-fourth street, Third avenue, East Seventieth street, Lexington avenue, East Sixty-ninth street, Third avenue, East Fifty-sixth street, Lexington avenue, East Fortieth street, Third avenue, East Thirty-fourth street, Lexington avenue, East Twenty-third street, Third avenue, East Fifteenth street, Irving place, East Fourteenth street, Fourth avenue, Astor place, Lafayette street, Great Jones street, West Third street to the place of beginning.

18. The eighteenth senate district shall consist of that part of the county of New York lying north of district number fifteen, and within and bounded by a line beginning at West Sixty-seventh street and the Hudson river, and running thence along West Sixty-seventh street, Amsterdam avenue, West Sixty-fourth street, Columbus avenue, West Sixty-seventh street, Central Park West, Ninety-seventh street Transverse road, Fifth avenue, West One Hundred and Tenth street, Seventh avenue, West One Hundred and Seventeenth street, Saint Nicholas avenue, West One Hundred and Eighteenth street, Manhattan avenue, West One Hundred and Twentieth street, Morningside Avenue East, Convent avenue, West One Hundred and Thirtieth street, Amsterdam avenue, West One Hundred and Thirty-third street and the Hudson river, to the place of beginning.

19. The nineteenth senate district shall consist of that part of the county of New York lying north of district number eighteen, and within and bounded by a line beginning at the Hudson river and West One Hundred and Thirty-third street, and running thence along West One Hundred and Thirty-third street, Amsterdam avenue, West One Hundred and Thirtieth street, Convent avenue,

Morningside Avenue East, West One Hundred and Twenteenth street, Manhattan avenue, West One Hundred and Eighteenth street, Saint Nicholas avenue, West One Hundred and Seventeenth street, Seventh avenue, West One Hundred and Tenth street, Fifth avenue, East One Hundred and Twentieth street, Madison avenue, East One Hundred and Twenty-ninth street, Fifth avenue, West One Hundred and Thirty-fifth street, Lenox avenue, Harlem river, and running thence along the Harlem river, Spuyten Duyvil creek and Hudson river to the place of beginning.

20. The twentieth senate district shall consist of that part of the county of New York lying north of district number sixteen and within and bounded by a line beginning at East Ninety-second street and East river, and running thence along East Ninety-second street, First avenue, East Ninety-first street, Second avenue, East Eighty-eighth street, Lexington avenue, East Ninety-sixth street, Fifth avenue, East One Hundred and Twentieth street, Park avenue, East One Hundred and Nineteenth street, Third avenue, East One Hundred and Seventeenth street, Second avenue, East One Hundred and Fifteenth street, Pleasant avenue, East One Hundred and Sixteenth street, the Harlem and the East river, to the place of beginning and also Ward's island and Randall's island.

21. The twenty-first senate district shall consist of that part of the county of New York lying north of district number twenty, and within and bounded by a line beginning at East One Hundred and Sixteenth street and Harlem river, running thence along East One Hundred and Sixteenth street, Pleasant avenue, East One

Hundred and Fifteenth street, Second avenue, East One Hundred and Seventeenth street, Third avenue, East One Hundred and Nineteenth street, Park avenue, East One Hundred and Twentieth street, Madison avenue, East One Hundred and Twenty-ninth street, Fifth avenue, West One Hundred and Thirty-fifth street, Lenox avenue, across the Harlem river to and along East One Hundred and Forty-ninth street, Park avenue, East One Hundred and Forty-sixth street, Third avenue, East One Hundred and Forty-eighth street, Saint Ann's avenue, East One Hundred and Forty-ninth street, Prospect avenue, Westchester avenue, the Bronx river, city line, to Long Island sound, and thence along Long Island sound and the East river, Bronx Kills and the Harlem river, to the place of beginning, and also the islands in the Long Island sound within the county of New York.

22. The twenty-second senate district shall consist of that part of the county of New York lying north and west of district number twenty-one, and within and bounded by a line beginning at the Harlem river and East One Hundred and Forty-ninth street, and running thence along East One Hundred and Forty-ninth street, Park avenue, East One Hundred and Forty sixth street, Third avenue, East One Hundred and Forty-eighth street, Saint Ann's avenue, East One Hundred and Forty-ninth street, Prospect avenue, Westchester avenue, the Bronx river, city line, Hudson river, Spuyten Duyvil creek, Harlem river, to the place of beginning.

All the above districts in the county of New York bounded upon and along the boundary waters of the county shall be deemed to extend to the county line.

23. The twenty-third senate district shall consist of the counties of Richmond and Rockland.

24. The twenty-fourth senate district shall consist of the county of Westchester.

25. The twenty-fifth senate district shall consist of the counties of Orange and Sullivan.

26. The twenty-sixth senate district shall consist of the counties of Columbia, Dutchess and Putnam.

27. The twenty-seventh senate district shall consist of the counties of Ulster and Greene.

28. The twenty-eighth senate district shall consist of the county of Albany.

29. The twenty-ninth senate district shall consist of the county of Rensselaer.

30. The thirtieth senate district shall consist of the counties of Washington and Saratoga.

31. The thirty-first senate district shall consist of the counties of Schenectady, Montgomery and Schoharie.

32. The thirty-second senate district shall consist of the counties of Lewis, Fulton-Hamilton and Herkimer.

33. The thirty-third senate district shall consist of the the county of Oneida.

34. The thirty-fourth senate district shall consist of the counties of Saint Lawrence and Franklin.

35. The thirty-fifth senate district shall consist of the counties of Jefferson and Oswego.

36. The thirty-sixth senate district shall consist of counties of Delaware and Broome.

37. The thirty-seventh senate district shall consist of the counties of Otsego, Madison and Chenango.

38. The thirty-eighth senate district shall consist of the county of Onondaga.

39. The thirty-ninth senate district shall consist of the counties of Clinton, Essex and Warren.

40. The fortieth senate district shall consist of the counties of Cayuga, Seneca and Cortland.

41. The forty-first senate district shall consist of the counties of Tompkins, Chemung, Tioga and Schuyler.

42. The forty-second senate district shall consist of the counties of Wayne, Ontario and Yates.

43. The forty-third senate district shall consist of the counties of Steuben and Livingston.

44. The forty-fourth senate district shall consist of the counties of Genesee, Wyoming and Allegany.

45. The forty-fifth senate district shall consist of the towns of Webster, Irondequoit, Penfield, Perinton, Pittsford, Brighton, Henrietta, Rush and Mendon, and the fourth, sixth, seventh, eighth, twelfth, thirteenth, sixteenth, seventeenth, eighteenth, twenty-first and twenty-second wards of the city of Rochester as at present constituted.

46. The forty-sixth senate district shall consist of the towns of Greece, Gates, Chili, Wheatland, Clarkson, Riga, Sweden, Ogden, Parma and Hamlin, together with the first, second, third, fifth, ninth, tenth, eleventh, fourteenth, fifteenth, nineteenth and twentieth wards of the city of Rochester as at present constituted.

47. The forty-seventh senate district shall consist of the counties of Niagara and Orleans.

48. The forty-eighth senate district shall consist of that part of the county of Erie within and bounded by a line beginning at the intersection of the northerly boundary of the city of Buffalo with the center line of Delaware avenue; thence southerly along the center

line of Delaware avenue to the intersection of the center line of Scajaquada creek; thence along the center line of Scajaquada creek to the intersection of the center lines of Scajaquada creek and Main street; thence along the center lines of Main street, Dodge street, Michigan street, Edna place, Masten street, North street, Jefferson street, Best street, Herman street, Genesee street, Sherman street, Broadway, Madison street, William street, Bennett street, Ash street, Genesee street, Michigan street, Tupper street, Oak street, Goodell street to the intersection of the center lines of Goodell street and Main street; thence southerly along the center line of Main street to the center line of Buffalo river; thence westerly along the center line of Buffalo river to a point in the westerly boundary of the state of New York opposite the mouth of Buffalo river; thence northerly along the westerly boundary of the state of New York to the intersection of said westerly boundary and the northwesterly boundary of the city of Buffalo; thence northeasterly, southeasterly and easterly along the northerly boundary of said city to the intersection of the northerly boundary of said city and the center line of Delaware avenue, the place of beginning.

49. The forty-ninth senate district shall consist of that part of the county of Erie lying east of district number forty-eight, within and bounded by a line beginning at the intersection of the easterly boundary of the city of Buffalo with the center line of Broadway; thence southerly and westerly along the said boundary of the said city of Buffalo to the westerly boundary of the state of New York; thence northerly along the westerly boundary of the state of New York to a point

opposite the mouth of Buffalo river; thence easterly to and along the center line of Buffalo river to the center line of Main street; thence northerly along the center line of Main street to the intersection of the center lines of Main street and Goodell street; thence along the center lines of Goodell street, Oak street, Tupper street, Michigan street, Genesee street, Ash street, Bennett street, William street, Madison street, Broadway, Sherman street, Genesee street, Herman street, Best street, and Walden avenue to the New York Central belt line, as now constituted; thence southerly along the New York Central belt line to the center line of Broadway; thence easterly along the center line of Broadway to the intersection of the easterly boundary of said city, the place of beginning.

50. The fiftieth senate district shall consist of all that part of the county of Erie lying north and east of districts number forty-eight and forty-nine, and within and bounded by a line beginning at the intersection of the northerly boundary of the city of Buffalo and the center line of Delaware avenue; thence southerly along the center line of Delaware avenue to the intersection of the center line of Scajaquada creek; thence along the center line of Scajaquada creek to the intersection of the center line of Main street; thence along the center lines of Main street, Dodge street, Michigan street, Edna place, Masten street, North street, Jefferson street, Best street and Walden avenue to the New York Central belt line, as now constituted; thence southerly along the New York Central belt line to the intersection of the center line of Broadway; thence easterly along the center line of Broadway to the intersection of the east-

erly boundary of the city of Buffalo, and all the remainder of the said county of Erie not hereinbefore described.

51. The fifty-first senate district shall consist of the counties of Chautauqua and Cattaraugus.

§ 121. The number of members of assembly of this state hereafter to be chosen in the several counties thereof shall be as follows:

In the county of Albany, three.
In the county of Allegany, one.
In the county of Broome, one.
In the county of Cattaraugus, one.
In the county of Cayuga, one.
In the county of Chautauqua, two.
In the county of Chemung, one.
In the county of Chenango, one.
In the county of Clinton, one.
In the county of Columbia, one.
In the county of Cortland, one.
In the county of Delaware, one.
In the county of Dutchess, two.
In the county of Erie, nine.
In the county of Essex, one.
In the county of Franklin, one.
In the county of Fulton-Hamilton, one.
In the county of Genesee, one.
In the county of Greene, one.
In the county of Herkimer, one.
In the county of Jefferson, two.
In the county of Kings, twenty-three.
In the county of Lewis, one.
In the county of Livingston, one.

In the county of Madison, one.
In the county of Monroe, five.
In the county of Montgomery, one.
In the county of Nassau, one.
In the county of New York, thirty-five.
In the county of Niagara, two.
In the county of Oneida, three.
In the county of Onondaga, three.
In the county of Ontario, one.
In the county of Orange, two.
In the county of Orleans, one.
In the county of Oswego, one.
In the county of Otsego, one.
In the county of Putnam, one.
In the county of Queens, four.
In the county of Rensselaer, two.
In the county of Richmond, one.
In the county of Rockland, one.
In the county of Saint Lawrence, two.
In the county of Saratoga, one.
In the county of Schenectady, one.
In the county of Schoharie, one.
In the county of Schuyler, one.
In the county of Seneca, one.
In the county of Steuben, two.
In the county of Suffolk, two.
In the county of Sullivan, one.
In the county of Tioga, one.
In the county of Tompkins, one.
In the county of Ulster, two.
In the county of Warren, one.
In the county of Washington, one.

In the county of Wayne, one.
In the county of Westchester, four.
In the county of Wyoming, one.
In the county of Yates, one.

THE LEGISLATIVE LAW.

CHAP. 37, LAWS OF 1909.

AN ACT in relation to legislation, constituting chapter thirty-two of the consolidated laws.

Article I. Short title.
II. Members, officers and employees of the legislature (§§ 1–24).
III. The enactment and publication of laws (§§ 40–49).
IV. Legislative committees: testimony in legislative proceedings (§§ 60–66).
V. Laws repealed; when to take effect (§§ 90, 91).

ARTICLE I.

Short Title.

Section 1. Short title.

§ 1. **Short title.**—This chapter shall be known as the "Legislative Law."

ARTICLE II.

Members, Officers and Employees of the Legislature.

Section 2. Exemption of members and officers from arrest.
3. Expulsion of members.
4. Contempts of either house.
5. Payment of salaries of members.
6. Officers and employees of the senate.
7. Officers and employees of the assembly.

Section 8. Appointments to be entered on journals.
9. Stenographers to special committees.
10. Compensation of officers and employees.
11. Compensation during extra sessions and impeachment trials.
12. Attendance of officers of each session at opening of next session.
13. Officers remaining after adjournment.
14. Undertaking of clerk of each house.
15. Duties of clerks.
16. Supplies furnished by clerks.
17. Accountability of clerks to comptroller.
18. Duties of postmasters and assistants.
19. Duties of stenographers.
20. Detail of officers and employees for special duties.
21. Limitation of legislative expenses.
22. Custody of legislative papers and documents.
23. Appropriation bills, how referred.
24. Drafting and revising of bills.

§ 2. **Exemption of members and officers from arrest.**—A member of the legislature shall be privileged from arrest in a civil action or proceeding other than for a forfeiture or breach of trust in public office or employment, while attending upon its session, and for fourteen days before and after each session, or while absent for not more than fourteen days during the session with leave of the house of which he is a member.

An officer of either house shall be privileged from arrest in such a civil action or proceeding while in actual attendance upon the house. Either house shall have the power to discharge from arrest any of its members or officers arrested in violation of his privilege from arrest.

§ 3. **Expulsion of members.**—Each house has the power to expel any of its members, after the report of a committee to inquire into the charges against him shall have been made.

§ 4. **Contempts of either house.**— Each house may punish by imprisonment not extending beyond the same session of the legislature, as for a contempt, for the following offenses only:

1. Arresting a member or officer of either house in violation of his privilege from arrest;

2. Disorderly conduct of its members, officers or others in the immediate view and presence of the house, tending to interrupt its proceedings;

3. The publication of a false and malicious report of its proceedings, or of the conduct of a member in his legislative capacity;

4. Giving or offering a bribe to a member, or attempting, by menace or other corrupt means, directly or indirectly, to influence a member in giving or withholding his vote, or in not attending meetings of the house of which he is a member;

5. Neglect to attend or to be examined as a witness before the house or committee thereof, or upon reasonable notice to produce any material books, papers, or documents, when duly required to give testimony or to produce such books, papers, or documents in a legislative proceeding, inquiry, or investigation.

§ 5. **Payment of salaries of members.**— The salary of a member of the legislative shall be payable during

the session, from time to time, at the rate of ten dollars per day, at any time during the session, for the number of days then expired, not exceeding in the aggregate fourteen hundred dollars, before the final adjournment of the legislature. The balance of such salary shall be payable at the final adjournment of the legislature.

§ 6. **Officers and employees of the senate.**— The president and temporary president of the senate may each appoint a clerk, a stenographer and a messenger. The senate may choose a clerk, a sergeant-at-arms, an assistant sergeant-at-arms, a stenographer, a principal doorkeeper and first assistant doorkeeper. The clerk of the senate may appoint one assistant clerk, a journal clerk, two assistant journal clerks, an executive clerk, five deputy clerks, an index clerk, an assistant index clerk, a revision clerk who shall be an expert in matters pertaining to that position, a librarian, an assistant librarian, a financial clerk, a messenger to the financial clerk, a clerk's messenger, a superintendent of documents, four assistant superintendents of documents, a superintendent of the wrapping department, four assistant superintendents of the wrapping department, a postmaster, an assistant postmaster, a post-office messenger, ten assistant doorkeepers, a janitor, and two assistant janitors of the senate chamber and its ante-rooms, a clerk, a stenographer and a messenger to each of the committees on finance, on affairs of cities and on judiciary; a clerk to each of the committees on codes, railroads, canals, insurance, taxation and re-

trenchment, printed and engrossed bills, revision, internal affairs of towns and counties and forest, fish and game laws; twelve general committee clerks, fifteen stenographers, one chief messenger and eight messengers to serve under the direction of the clerk of the senate upon standing committees of the senate not herein otherwise provided for, or as the business of the senate shall require; one of the said stenographers shall be assigned to the selected representative of the minority upon the finance committee, one as assistant to the stenographer of the senate, one as stenographer to the journal clerk of the senate, and one to the clerk of the senate; fifteen pages to serve under the direction of the clerk of the senate. The term of all employees as chosen or appointed under this section, shall be for the session except that of clerk of the senate, who shall be elected for the term of the senate.

§ 7. **Officers and employees of the assembly.**— The speaker of the assembly may appoint a clerk, a stenographer and a messenger to be known as the speaker's clerk, the speaker's stenographer and the speaker's messenger, respectively, and also twelve assistant doorkeepers, a postmaster, an assistant postmaster, a post-office messenger, a janitor of the assembly chamber and its ante-rooms, four assistant janitors, a messenger to the committee on ways and means, a messenger to the committee on the affairs of cities, ten general clerks, ten general messengers, and thirty-five clerks of committees, one of whom shall be designated to serve as clerk to the committee on ways and means, one as clerk

to the committee on judiciary, one as clerk to the committee on general laws, one as clerk to the committee on cities, one as clerk to the committee on railroads, one as clerk to the committee on codes, and the others to serve under the direction of the clerk of the assembly. He may also appoint ten stenographers, one of whom shall be assigned to the committee on ways and means, one to the committee on cities, one to the committee on judiciary, one to the committee on general laws, one to the committee on railroads, one to the committee on codes, one to the committee on insurance, one to the journal clerk of the assembly, one to the index clerk of the assembly, and one to the selected representative of the minority upon the committee on ways and means. The assembly may choose a clerk, a sergeant-at-arms, a stenographer, a principal doorkeeper, who shall act as assistant sergeant-at-arms, and a first and second assistant. The clerk of the assembly may appoint a stenographer to the clerk, a clerk's messenger, an assistant clerk, a journal clerk, two assistant journal clerks, twelve deputy clerks, one of whom shall act as clerk to the committee on engrossed bills, and one as clerk to the committee on revision, who shall be an expert in matters pertaining to that position, an index clerk, two assistant index clerks, a librarian and assistant librarian, an assistant clerk to the committee on engrossed bills, a financial clerk, an assistant financial clerk, a messenger to the financial clerk, a superintendent of the wrapping department, five assistants to the superintendent of the wrapping department, a mail and document carrier, a superin-

tendent of documents, five assistant superintendents of documents, a tally clerk, ten general stenographers, five messengers, one of whom shall have charge of the pages under the direction of the clerk of the assembly, twenty messengers to committees and twenty-five pages.

§ 8. **Appointments to be entered on journals.**— All appointments made under this chapter shall be entered on the journal of the house wherein made, with a statement of the date of appointment and the length of time the same is to continue.

§ 9. **Stenographers to special committees.**— No additional officers or employees shall be elected or appointed by the senate or assembly, except that either house, by a majority vote, may employ a stenographer for a committe of investigation or other special committee.

§ 10. **Compensation to officers and employees.**— The following compensation shall be paid to the officers and employees of the senate and assembly for the annual session of the legislature: To the clerk of each house three thousand five hundred dollars; to the clerk of the senate five hundred dollars and to the clerk of the assembly seven hundred dollars and fifty dollars for indexing the journals, bills and documents of the senate and assembly; to the clerk of the senate not to exceed five hundred dollars, and to the clerk of the assembly not to exceed seven hundred dollars and fifty dollars for the extra clerical service and engrossing; to each

assistant clerk two thousand five hundred dollars; to each journal clerk two thousand five hundred dollars; to each first assistant journal clerk and to the executive clerk one thousand five hundred dollars; to each second assistant journal clerk, and to the assistant clerk to the committees on engrossed bills of the assembly, each one thousand dollars; to each deputy clerk, one thousand dollars, except the deputy clerk assigned as chief clerk of the engrossing rooms of the senate and assembly, who shall receive fifteen hundred dollars each; excepting also the deputy clerk assigned as clerk to the committee on revision in the assembly and the revision clerk of the senate who shall each receive fifteen hundred dollars; to each financial clerk, one thousand five hundred dollars; to the assistant financial clerk of the assembly, ten dollars per day; to the messenger of each of the financial clerks, five dollars per day; to each index clerk, two thousand dollars; to the first assistant index clerk of the assembly, fifteen hundred dollars; to the second assistant index clerk of the assembly and to the assistant index clerk of the senate, each one thousand dollars; to the clerk of the president of the senate, to the clerk of the temporary president and to the speaker's clerk, each ten dollars per day; to the stenographer of the president of the senate, of the temporary president, of the speaker, of the clerk of the senate, and clerk of the assembly, and each of the stenograpers appointed in addition thereto by the speaker, and the clerk of the senate, five dollars per day; to each general stenographer of the assembly three dollars per day; to each

sergeant-at-arms, fifteen hundred dollars: to each librarian, and postmaster, six dollars per day; to the assistant sergeant-at-arms of the senate, to each assistant librarian, assistant postmaster, principal doorkeeper, assistant doorkeeper, janitor, assistant janitor, superintendent of documents, and to each assistant superintendent of documents, superintendent of the wrapping department, assistant superintendents of the wrapping department, five dollars per day; to the stenographer of each house, two thousand five hundred dollars; to each clerk of the senate committee on finance and affairs of cities, ten dollars per day; to each clerk of the senate committees on judiciary and codes, seven dollars per day; to each clerk of the assembly committees on ways and means, and affairs of cities, ten dollars per day; to the clerk of the assembly committees on judiciary, on codes, on railroads, seven dollars per day; to each other committee clerk of each house and each general clerk of the assembly, five dollars per day; to the postoffice messenger of each house, three dollars per day; to the messenger of the president of the senate, the temporary president and the speaker's messenger, each three dollars per day; to the superintendent of the wrapping department, to each assistant superintendent of the wrapping department, to the tally clerk, and the mail and document carrier of the assembly, five dollars per day; to each general messenger of each house, three dollars per day; to each clerk's messenger of each house and to each messenger of the committees of each house, three dollars per day; to each messenger having charge of the pages in the senate and assembly, five

dollars per day; and to each page, two dollars per day. The pay of the officers or the employees who receive by this chapter a per diem compensation shall commence at the date of the appointment, and no person or employee shall receive any additional compensation during the term of service for which he shall be appointed.

§ 11. **Compensation during extra sessions and impeachment trials.**— An employee of the senate or assembly, during an extra session of the legislature, or an officer or employee of the senate designated to attend upon the senate when sitting as a court for the trial of impeachments, or upon the trial of public officers on the recommendation of the governor, shall receive the same per diem allowance during such term or extra session as his compensation or per diem allowance would give per day of the regular session of the same year.

§ 12. **Attendance of officers of each session at opening of next session.**— The clerk of each house, and one officer thereof designated by him, shall attend and receive compensation for a period of eight days for their services prior to and upon the opening of the next succeeding session of the legislature, and the following other officers only of each session shall attend and receive compensation for their services upon the opening of the next succeeding session of the legislature: the assistant clerk, the journal clerk, speaker's clerk, sergeant-at-arms, postmasters, financial clerk, index clerk, stenographer and principal doorkeeper of the

senate and assembly and assistant doorkeeper and four pages in the senate, and three assistant doorkeepers, two messengers and six pages in the assembly, the assistant doorkeepers, messengers and pages to be designated by the presiding officer of the house for which appointed before the close of the session and entered upon the journal of the house. The officers named in this section shall receive for services upon the opening of a succeeding session of the legislature the same per diem compensation as they were entitled to receive at the preceding session for like services.

§ 13. **Officers remaining after adjournment.**— The clerk of each house and five officers thereof to be designated by the presiding officer thereof may remain after the adjournment of the legislature to perform duty under the direction of the clerk of each house respectively for not to exceed thirty days. Such officers shall receive the same per diem compensation respectively, as they were entitled to receive during the session, to be paid upon the warrant of the comptroller on the certificate of the clerk of the house for which appointed.

§ 14. **Undertaking of clerk of each house.**— The clerk of each house before entering upon the duties of his office, shall execute an official undertaking in the sum of ten thousand dollars.

§ 15. **Duties of clerks.**— The clerks of the senate and assembly shall annually, without extra compensation, revise, and send to the members of the legislature, be-

fore the organization thereof, the clerk's manual, and shall, within thirty days after the organization of the legislature, prepare a statistical list of the members and officers, with their boarding places or places of residence while in the city of Albany.

The clerk of each house shall, as soon as practicable after the close of each session, prepare and deliver to the legislative printer the indexes to the journals, bills and documents of such house.

§ 16. **Supplies furnished by clerks.**— The clerk of each house shall purchase all stationery, printed blanks and other articles necessary for use in his official work, or in the work of the sergeant-at-arms, and shall furnish its members, officers and reporters with necessary stationery and writing materials and shall prepay the postage on all letters deposited with them for transmission through the mails by members of the senate and assembly, respectively. The clerk of each house shall, under the direction and subject to the approval of the comptroller purchase such furniture as may be necessary for the house of which he is clerk.

§ 17. **Accountability of clerks to comptroller.**— The clerk of each house at the end of each month during the session shall account to the comptroller for all moneys received up to that time, and within ten days after the close of the session, shall file with the comptroller an abstract in such form and containing such particulars as the comptroller shall direct of all expenditures made by him, with the vouchers therefor; and

shall give him satisfactory evidence that the expenditures were reasonable.

§ 18. **Duties of postmasters and assistants.**— The postmasters and assistant postmasters and post-office messengers shall perform all the labors in the post-offices of their respective houses.

§ 19. **Duties of stenographers.**— The stenographers shall attend at every session of the body for which they are appointed or elected and take stenographic notes of the debates of such body and in the committee of the whole thereof, and furnish a copy thereof written out in longhand, to any member of such body.

§ 20. **Detail of officers and employees for special duties.**— The presiding officer and clerk of each house may detail any of the officers or employees thereof to perform such duties in addition to those ordinarily performed as they may deem advisable to promote the business of such house.

§ 21. **Limitation of legislative expenses.**— Neither house shall, without the consent of the other, order to be printed more than four thousand copies of any paper or document, or the purchase of any books, the aggregate cost of which shall exceed one hundred dollars; or appoint any committee of its own members or others at the public expense, except in case of contested elections; or incur any expense whatever except as provided by this chapter.

§ 22. **Custody of legislative papers and documents.**—The clerk of each house shall take charge of and keep on file all documents of such house, and those presented to it; and shall cause all papers in his charge to be so classified and arranged that they can be easily found. No paper shall be withdrawn from the files of either house, whether the same be in charge of the regents of the university or the clerk of such house, except that such clerk, or a deputy appointed by him, shall have access to the papers of such house in charge of the regents for the purpose of taking copies. Any person may obtain a certified copy of any paper or document on such files by applying to the clerk in charge thereof and paying to such clerk the same fees as are charged by law by the secretary of state for engrossing and certifying exemplifications of records deposited in his office. Either house may, by resolution, order title deeds or original documents accompanying any petition to be delivered to the persons entitled thereto. The journals of proceedings and documents of each house, heretofore published and now in the custody of its clerk, and the documents of each house hereafter published and kept in custody of its clerk, shall be deemed for all purposes to be the original journals of the proceedings and the original documents of such house. The clerk of each house shall compare a printed volume or volumes of its journal of proceedings hereafter published under his direction from the original manuscript copy thereof, and having noted in such printed volume or volumes each error contained therein, shall attach thereto a certificate, under his hand

and official seal, that each such printed volume was published under his direction and that, as corrected, it is a correct transcript of the text of such original manuscript copy. He shall thereupon deposit and keep such printed volume or volumes, so corrected and certified, in his custody and the same shall thereupon become and be deemed for all purposes to be the original journal of journals of proceedings of such house; and the same, or a copy certified by the clerk, may be read in evidence. The manuscript copy of the journal prepared by the journal clerk shall be kept continuously in the custody of the clerk until the printed journal shall have been published, compared, corrected and certified in the form and manner provided herein. The clerk shall cause a duplicate or typewritten copy of said manuscript copy of each day's journal to be prepared and furnished to the printer for his use in printing the published journal.

§ 23. **Appropriation bills, how referred.**—All bills that involve any appropriation from the treasury of the state, when introduced in the senate, shall be referred to the committee on finance, and when introduced in the assembly, shall be referred to the committee on ways and means.

§ 24. **Drafting and revision of bills.**—The temporary president of the senate and the speaker of the assembly shall appoint such number of competent persons as may be needed, not exceeding three, whose duty it shall be during the session of the legislature, on request of either house of the legislature or of any committee,

member or officer thereof, to draft bills, examine and revise proposed bills, and advise as to the consistency or other effect of proposed legislation. Such persons shall receive a compensation to be fixed by the temporary president of the senate and the speaker of the assembly, and shall be entitled to their clerical and other necessary expenses, to be approved by such officers.

ARTICLE III.

The Enactment and Publication of Laws.

Section 40. Certificate of presiding officer.
41. Evidence of when bill becomes a law.
42. Deposit of laws and concurrent resolutions with secretary of state.
43. Time of taking effect of laws.
44. Statement in session laws as to passage of law.
45. Publication of session laws; contents of published volumes of session laws.
46. Officers and institutions entitled to receive session laws.
47. Officers and institutions entitled to receive bound volumes of journals, bills and documents.
48. Publication of session laws and concurrent resolutions.
49. Slips of session laws to be forwarded to clerks.

§ 40. **Certificate of presiding officer.**— Upon the passage of a bill or concurrent resolution by either house, the presiding officer thereof shall append to such bill or resolution, a certificate of the date of its passage

by the votes of a majority of all the members elected to such house or in the presence of three-fifths of such members, if such be the case, or by the votes of two-thirds of all the members elected to such house, as the case may be. No bills shall be deemed to have so passed unless certified by the presiding officer, which certificate to such effect shall be conclusive evidence thereof.

§ 41. **Evidence of when bill becomes a law.**— If a bill becomes a law by the approval of the governor, the certificate of the governor shall be the evidence of the time when the bill becomes a law. If a bill becomes a law by the failure of the governor to sign it or to return it to the house where it originated without his approval within the time required by the constitution, the certificate of the secretary of state of the time when it was filed in his office shall be evidence of the time when it became a law.

§ 42. **Deposit of laws and concurrent resolutions with secretary of state.**— Every concurrent resolution upon its passage, and every bill upon its becoming a law, with the certificate of the presiding officer of each house appended thereto, shall be deposited with the secretary of state. The secretary of state shall forthwith upon such deposit indorse upon each bill his certificate of the day, month and year it was filed in his office, and his certificate to such effect shall be presumptive evidence thereof. The secretary of state shall cause the original laws and concurrent resolutions passed at each

session to be bound together in a volume of convenient size to be kept in his office. He shall compare with the original a volume of the printed laws, and having noted therein at the end of each law or resolution any error in the printed volume, shall deposit such printed volume with the original volume in his office. Each such volume shall be lettered on its back with its title and the session at which the laws were passed.

§ 43. **Time of taking effect of laws.**— Every law, unless a different time shall be prescribed therein, shall take effect on the twentieth day after it shall have become a law.

§ 44. **Statement in session laws as to passage of law.** — In the publication of every law, the certificates appended thereto shall be omitted, but there shall be inserted immediately under the title of the law, a statement to the effect that it became a law upon the properly specified date, with or without the approval of the governor, or notwithstanding his objections, as the case may be, and adding the words "passed by a two-thirds vote," "passed, three-fifths being present," or "passed, a majority being present," in accordance with the certificates appended to the original bill. Such statement shall be presumptive evidence that the original law was certified by the presiding officer of each house accordingly.

§ 45. **Publication of session laws; contents of published volumes of session laws.**— The secretary of state shall annually cause the session laws to be published as soon as possible after the adjournment of the legislature. Such volumes shall contain:

1. A statement of the names and residences of the governor, lieutenant-governor, senators and members of assembly, the presiding officers and clerks of both houses in office during each session.

2. The laws and concurrent resolutions passed at each session.

3. Amendments to the state constitution approved and ratified by the people at the last preceding general election.

4. Tables showing the laws and parts thereof amended or repealed by such laws.

5. Indexes of the laws and concurrent resolutions contained in such volumes.

6. Such other matters as are required by law to be published in such volumes.

Such laws, concurrent resolutions, tables, indexes and other matters so required to be published shall be prepared for publication in the state library under the supervision of the director thereof. Side notes or section headings shall be inserted indicating the subject-matter of the several sections of the laws and concurrent resolutions. Suitable references to existing general or consolidated laws, codes, or special or local laws may be made in foot notes or otherwise. The said director may submit to the state printing board changes in the style or execution as to type and paper, which, when approved by such board, shall be the style of execution to be thereafter followed in the publication of session laws. All contracts hereafter entered into for the printing of session laws shall be for terms of two years, and shall provide for the printing thereof in the style

as so approved, and with the notes and references and in the form, and containing the matter, herein authorized or required. Each volume printed for the state shall contain the certificate of the secretary of state that it was printed under his direction.

§ 46. **Officers and institutions entitled to receive session laws.**— As soon as the session laws of each session are printed and bound, the secretary of state shall distribute the bound printed volumes:

1. To the clerk of the senate, for the use of the senate, sixteen copies; and to the clerk of the assembly, for the use of the assembly, eighteen copies;

2. To the governor, for the use of the executive chamber, the lieutenant-governor, members of the legislature, clerks of the two houses, judges of the court of appeals, the justices of the supreme court, and the judges of the court of claims, each one copy; and to each state officer, and to each board or commission of state officers, having an office in the capitol, for their respective offices, each one copy;

3. To the county clerk of each county a sufficient number of copies to distribute one copy to each of the following officers in his county: each town clerk, for the use of the town; the district attorney; the clerk of the board of supervisors, for the use of the board; the county judge; the surrogate, except where the county judge acts as surrogate, for the use of the surrogate's court; the county treasurer; the jury commissioner, in counties in which the office of jury commissioner has been created; the mayor of each city; the clerk of each

city, for the use of the city; and to each village clerk. Every such officer shall deliver such copy of the session laws to his successor in office. The expense of such distribution by the county clerk shall be a county charge:

4. To each incorporated college or university of the state, one copy;

5. To the anthenæums of the cities of Philadelphia, Boston, New York and Albany, and to the Historical Society of the city of New York, each one copy;

6. To the secretary of state of the United States, four copies;

7. To the governors of the several states, as many copies as are directed to be sent by the governor of this state.

§ 47. **Officers and institutions entitled to receive bound volumes of journals, bills and documents.** — As soon as the journals, bills and documents are bound, the clerks of the senate and assembly respectively shall distribute them as follows:

1. For the senate library, three copies of the journals and documents, and two copies of the bills;

2. For the assembly library, five copies of the journals and documents, and three copies of the bills;

3. For counties, public officers and incorporated colleges and universities in this state, one hundred and thirty-two copies of the journals and documents;

4. For the literary and scientific exchanges, to be made by the regents of the university, including one copy of each for each state and territory, one hundred and thirty-five copies of the journals and documents;

5. For the state library, two copies of the journals, documents and bills;

6. To the executive chamber, one copy of the bills;

7. To the office of the secretary of state, one copy of the bills.

§ 48. **Publication of session laws and concurrent resolutions.**— 1. All laws of a general nature which shall hereafter be passed by the legislature of this state, shall be published in at least two newspapers in each county of this state where there are or may be hereafter two newspapers published; and in one newspaper in each county where but one newspaper is published or may be published; except that in the county of New York they shall be published in four newspapers, two in borough of Manhattan and two in borough of Bronx. All laws of a local nature which shall hereafter be passed by the legislature of this state, shall be published in like manner in each of the counties interested in the same. All laws affecting two or more counties, and not all the counties of the state, shall be considered local laws applicable to the several counties affected.

2. It shall be the duty of the secretary of state to transmit in the order in which they are passed, and within twenty days from the date of the filing of said laws in his office, to each treasurer of the several counties of the state, and to the publisher of each newspaper designated by law to publish the session laws of a general nature, and such as relate to the local affairs therein, for publication in the manner provided for in this section. It shall be the duty of each treasurer to cause the same to be published in the papers designated for publishing them, within ninety days from date of

the receipt thereof by the said publisher; and the whole of every such law which, in the ordinary type of the newspaper in which it is published, would not occupy more than two columns, must be published in one issue, and when it exceeds such space, shall be published as soon as possible, by occupying such space in each successive issue. The secretary of state shall cause to be stated upon each and every law transmitted by him for publication as aforesaid, the exact number of folios contained therein, which shall be the basis for payment; and he shall also indicate in the same manner, which are general laws, and which are laws of a local nature applicable only to the county affected. It shall be the duty of the publisher of each newspaper designated to publish the session laws, to forward to the secretary of state, a marked copy of each general law published in said newspaper within five days after such publication, and also to forward to the county treasurer of the county within which such publication is made, a marked copy of each local law passed by the legislature and published under the provisions of this section. It shall be the duty of the county treasurer to keep a correct record of all laws received from the secretary of state for publication, with the date of receipt, and number of folios indicated, and to report to the secretary of state on or before October first, in each year, whether the publication of general laws has been regularly made as provided by law, and he shall also report to the board of supervisors of his county during the first week of the annual session thereof, whether the publication of local laws has been made as provided by law, transmitting with his report

a copy of each local law received from the secretary of state, with the number of folios indicated in each such local law, together with the date of publication in newspapers legally designated to make such publication.

3. The secretary of state shall designate two newspapers in each of the counties of Queens and Richmond for the publication of session laws required by law to be published, representing respectively, each of the two principal political parties into which the people of such counties are divided, on the nomination of the county committee of each of such parties.

4. The secretary of state shall send to each newspaper designated pursuant to law, in the order in which they are passed, and as soon as the slips are printed, copies of such concurrent resolutions as are required to be published. Concurrent resolutions proposing amendments to the constitution shall be published in such newspapers once in each week for thirteen consecutive weeks, under the direction of the secretary of state at the expense of the state, in such a manner, by the use of italics and brackets, as to indicate the new matter added or the old matter eliminated.

5. The charge for such publication of general laws in the newspapers designated to publish said laws, shall be paid by the treasurer of the state on the warrant of the comptroller, after certification by the secretary of state, that the said publication has been regularly made as provided in this section, at the fixed rate of thirty cents for each folio of one hundred words. The charge for such publication of laws of a local nature in the newspapers designated to publish said laws shall be

paid by the several counties of the state in which said laws may be published in the manner prescribed by this subdivision, at a rate which shall not be less than twenty-five cents nor more than fifty cents for each folio of one hundred words, as the board of supervisors in the several counties may determine. It shall be the duty of each board of supervisors in the several counties of this state, in making out the assessment-rolls, to assess and levy on the taxable property of the county whose representatives they are, such sums as shall be sufficient to defray the expense of publishing the laws of a local nature applicable only to the county affected, in the newspaper designated.

6. This section shall not apply to counties in which the publication of the laws provided for in this section is regulated by special provision of law, where the same is inconsistent therewith, but the number of papers in which such laws are directed to be advertised, and the rates of compensation for such publications fixed by such special provision shall not be changed by the provisions of this section.

§ 49. **Slips of session laws to be forwarded to clerks.**— The county clerk of each county shall, on or before the first day of January of each year, notify the secretary of state of the total number of towns, villages and cities within such county. The secretary of state, as soon as practicable after the receipt of the slips of the session laws from the printer, shall send to the county clerk of each county a sufficient number of each printed slip of each law and concurrent resolution of the legislature

affecting such county or any municipality therein, to supply such county and each such municipality affected by any such law or concurrent resolution, with one copy thereof. The county clerk of each county, as soon as practicable after the receipt thereof, shall send one of each slips affecting any town, village or city therein to the clerk thereof, and shall retain one of each such slips on file in his office. Such distribution by the county clerk shall be by mail and shall be a county charge. Such slips shall be kept on file in the office of such clerks, arranged in the order in which they were passed. Such clerks shall not be entitled to any fee or compensation for filing such slips or keeping the same on file in their respective offices.

ARTICLE IV.

Legislative Committees; Testimony in Legislative Proceedings.

Section 60. Testimony before legislative committees.
61. Subcommittees.
62. Witnesses' fees.
63. Expenses of committees.
64. Contested elections.
65. Expenses of unsuccessful contestant.
66. Legislative appearances.

§ 60. **Testimony before legislative committees.**—A legislative committee may require the attendance of witnesses in this state whom the committee may wish to examine, or may issue a commission for the examination

of witnesses who are out of the state or unable to attend the committee or excused from attendance, which commission if directed by the house or legislature by which the committee is appointed may be executed during the recess of the legislature. A commission issued as provided by this section shall be in the form used in the courts of record of this state and shall be executed in like manner. Unless otherwise instructed by the committee appointing them the commissioners shall examine privately every witness attending before them and shall not make public the particulars of such examination.

§ 61. Subcommittees. Whenever any standing committee of either house of the legislature shall be required to make an inquiry or investigation, such committee may appoint a subcommittee of not less than three of its own members to make such inquiry or investigation, and to take testimony in relation thereto; and such committee or subcommittee and the chairman thereof shall respectively have all the powers and authority, which are conferred by law upon any committee which is authorized to send for persons or papers, or upon the chairman thereof.

§ 62. Witnesses' fees.—Any person attending as a witness under the provisions of the last two sections shall receive the same fees as are allowed witnesses in civil actions in courts of record. Such fees need not be prepaid, but the comptroller upon the certificate of

the chairman of the committee, and proof by affidavit or otherwise that the same is due, shall draw his warrant for the payment of the amount thereof.

§ 63. **Expenses of committees.**— Whenever by resolution of either house, a committee duly appointed by it, shall be directed to conduct an investigation or take testimony in any other place than the city of Albany, the comptroller shall draw his warrant for the payment of the actual and necessary expenses of the committee or subcommittee having in charge such investigation, inquiry or taking of testimony, and of the officers and employees authorized to accompany them, upon the rendition of an itemized bill of such expenses certified by the chairman of the committee, and approved by the presiding officer of the house by which the committee was appointed, and upon proof by affidavit or otherwise that the same is due.

§ 64. **Contested elections.**— Upon the application of any person desirous of obtaining testimony respecting the election of a member of either house, for the purpose of contesting an election, or resisting a contest thereof, any county judge of the county, or justice of the supreme court of the district, or the mayor or recorder of a city in which the member or applicant shall reside, may require the attendance of persons named by the applicant, at a specified time and place, to be examined respecting such election; and shall, at the same time, issue a notice to the opposite party of the time, place and object of such examination. The notice shall

be served in the same manner as a notice of motion in a court of record. At the time appointed for the examination, upon proof of the due service of such notice, the witnesses who shall attend or who shall be produced by either party, shall be examined under oath before such officer, respecting such matters relating to the election about to be contested, as shall be proposed by either party. The testimony given upon such examination shall be reduced to writing, signed by the witnesses respectively, certified by the officer before whom it was taken, and with the subpœna, notice and proof of the service thereof, shall be sent by him under seal to the clerk of the house to which the election pertains.

A witness attending before such officer, by virtue of a subpœna, shall receive the same fees as are allowed to witnesses in civil suits in courts of record, to be paid by the party at whose instance such witness was summoned.

§ 65. **Expenses of unsuccessful contestant.**—When the seat of any member of the legislature shall be contested, no expense incurred by the contestant, in prosecuting his claim, shall be paid by the state, unless such seat be awarded to the contestant.

§ 66. **Legislative appearances.**— Every person retained or employed for compensation as counsel or agent by any person, firm, corporation or association to promote or oppose directly or indirectly the passage of bills or resolutions by either house or to promote or oppose executive approval of such bills or resolutions, shall, in

each and every year, before any service is entered upon in promoting or opposing such legislation, file in the office of the secretary of state a writing subscribed by such counsel or agent stating the name or names of the person or persons, firm or firms, corporation or corporations, association or associations, by whom or on whose behalf he is retained or employed, together with a brief description of the legislation in reference to which such service is to be rendered. No notice so filed shall be valid for more than thirty days after the adjournment of the session of the legislature held in the year in which the same is filed. It shall be the duty of the secretary of state to provide a docket to be known as the docket of legislative appearances, with appropriate blanks and indices, and to forthwith enter therein the names of the counsel and agents so retained or employed and of the persons, firms, corporations or associations retaining or employing them, together with a brief description of the legislation in reference to which the service is to be rendered, which docket shall be open to public inspection. Upon the termination of such employment the fact of such termination, with the date thereof, may be entered by direction of either such counsel or agent or of the employer. No person, firm, corporation or association shall retain or employ any person to promote or oppose legislation for compensation contingent in whole or in part upon the passage or defeat of any legislative measure or measures. No person shall for compensation engage in promoting or opposing legislation except upon appearance entered in accordance with the foregoing provisions of this section. And no person shall

accept any such employment or render any such service for compensation contingent upon the passage or defeat of any legislative measure or measures. It shall be the duty of every person, firm, corporation or association within two months after the adjournment of the legislature to file in the office of the secretary of state an itemized statement verified by the oath of such person, or in case of a firm of a member thereof, or in case of a domestic corporation or association of an officer or agent thereof, showing in detail all expenses paid, incurred or promised directly or indirectly in connection with legislation pending at the last previous session, with the names of the payees and the amount paid to each, including all disbursements paid, incurred or promised to counsel or agents, and also specifying the nature of said legislation and the interest of the person, firm, corporation or association therein. The provisions, however, of this section requiring docket entries shall not apply to duly accredited counsel or agents of counties, cities, towns, villages, public boards and public institutions. And the provisions hereof shall not be construed as affecting professional services in drafting bills or in advising clients and in rendering opinions as to the construction and effect of proposed or pending legislation where such professional service is not otherwise connected with legislative action. Every person, every member of any firm, and every association or corporation violating any provision of this section and every person causing or participating in a violation thereof shall be guilty of a misdemeanor and, in case of an individual, shall be punishable by imprisonment in a

penitentiary or county jail for not more than one year or by a fine of not more than one thousand dollars or by both, and, in case of an association or corporation, by a fine of not more than one thousand dollars. And in addition to the penalties hereinbefore imposed any corporation or association failing to file the statement of legislative expenses within the time required shall forfeit to the people of the state the sum of one hundred dollars per day for each day after the expiration of the two months within which such statement is required to be filed, to be recovered in an action to be brought by the attorney-general.

ARTICLE V.

Laws Repealed; When to Take Effect.

Section 90. Laws repealed.
91. When to take effect.

§ 90. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 91. **When to take effect.**— This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Revised Statutes..... Part 1, chapter 7.....All.

Laws of	Chapter.	Section.
1778.....	12.....	1.
1778.....	24.....	All.
1779.....	11.....	All (2d Sess.).

Laws of	Chapter.	Section.
1785.....	90.....	34.
1786.....	14.....	All.
1786.....	35.....	All.
1788.....	34.....	1.
1790.....	35.....	All.
1792.....	63.....	4–6.
1797.....	31.....	8, 9.
1798.....	104.....	All.
1800.....	70.....	All.
1801.....	27.....	1.
1801.....	173.....	3, 4.
1801.....	194.....	All.
1803.....	44.....	All.
1805.....	17.....	4, 5.
1811.....	150.....	All.
1811.....	246.....	41.
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1824.....	238.....	44.
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1827.....	242.....	All.
1827.....	9.....	All (2d Meet.).
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1828.....	20.....	1–14, 24–33 (2d Meet.).
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1829.....	275.....	All.
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1841.....	300.....	All.
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1845.....	280.....	All.
1846.....	24.....	All.
1847.....	59.....	All.
1847.....	199.....	All.
1847.....	200.....	All.
1847.....	253.....	All.
1847.....	254.....	All.
1847.....	458.....	All.
1849.....	312.....	All.
1850.....	281.....	All.
1851.....	322.....	All.
1853.....	530.....	All.
1854.....	51.....	All.
1854.....	197.....	All.
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1894.....	138.....	All.
1894.....	218.....	1.
1894.....	473.....	All.
1894.....	491.....	All.
1895.....	218.....	All.
1895.....	477.....	All.
1895.....	856.....	All.
1896.....	259.....	All.
1897.....	19.....	All.
1901.....	88.....	1.
1901.....	467.....	All.
1902.....	182.....	All.
1902.....	293.....	All.
1904.....	172.....	All.
1905.....	23.....	All.
1906.....	240.....	All.
1906.....	321.....	All.
1906.....	475.....	All.
1907.....	427.....	All.
1908.....	2.....	All.
1908.....	216.....	All.
1908.....	289.....	All.

MISCELLANEOUS.

OF CONTESTS FOR SEATS.

The Constitution, article 3, section 10, provides that each House shall be the judge of the election, returns and qualifications of its own members.

The member whose right to his seat is disputed holds it under the certificate of the canvassing board, until ousted in due course. But it is not unusual that the person claiming the disputed seat is accorded a seat in the House, and other privileges and rights belonging to members.

Formerly it was customary to allow the unsuccessful contestant the expenses of his contest, and sometimes, where the grounds of the contest had been very strong, the pay and mileage of a member up to the time of a final decision. It may be doubted whether, under the Constitution, as amended in 1874, such a payment would be lawful, even if provided for by statute. Chapter 37 of the Laws of 1909 (§ 65), however, puts the question at rest by providing that no expense incurred by the contestant in prosecuting his claim shall be paid by the State, unless the contestant shall be awarded the seat.

Proceedings in such cases are always initiated by petition, the claimant presenting his case in that form, with such statements of facts, affidavits, etc., as constitute the ground of his claim.

Chapter 37 of of the Laws of 1909 (§ 64) provides that both parties to such contest may, on complying with certain requisitions, have testimony taken pro and con, in advance of the Legislature — then to be laid before the committee having the matter in charge.

The Standing Committee on Privileges and Elections, to whom such cases are always referred, may be appointed in advance of the other standing committees, when such cases present themselves at the opening of a session.

The committee charged with such cases is restricted in its range of inquiry only by the nature of the case and the order of the House. They may confine themselves to the testimony adduced by the parties, or to even narrower bounds, or they may go beyond it. But if the case seems to require that the committee should go behind the ballot boxes and ascertain the intention of the voters on one side and the other — as where the case turns on misspelled or defective ballots — the committee generally take the sense of the House on the subject, especially if such inquiry promises to be extensive and expensive, and to delay a report until an advanced stage of the session.

The legislative journals and documents are full of precedents as to the usages and rules which govern the committee and the House in such cases.

FORM OF SUBPOENA.

The following form of subpœna is applicable to all cases where an investigation has been ordered by the Assembly, and power granted to send for persons and

papers; if the investigation has been intrusted to a joint committee, a slight variation of this form will render it applicable to the case:

Assembly Chamber,
Albany, ..., 19...

To .....:

Sir.— In pursuance of a resolution of the Assembly adopted ..... of which the following is a copy:

On motion of Mr. .....

Resolved (insert the resolution).

You are hereby notified to attend before said committee at ....., in the city of Albany, on ....., the ..... day of ....., 18.., at ..... o'clock ..M., there to give such information, touching the subject of inquiry, as may be in your possession.

And you are hereby further directed to bring with you before said committee, ..., and such other documents in your custody as may be required in the investigation of the said subject.

By order of the committee.

....., Chairman.

The committee may authorize any citizen of suitable age and discretion to serve the subpœnas, though that duty is usually performed by the Sergeant-at-Arms or his assistant. A list of the witnesses should be delivered to the person so authorized, with an order directing him to summon the witnesses and make due return thereof. The following forms will suffice for this purpose:

To .....:

Sir.— In pursuance of a resolution of the Assembly, of which the following is a copy (insert copy of resolution), you will serve upon each of the persons, named in the notices hereto attached, a copy of such notice, or leave the same at his residence or usual place of business, with some person of suitable age or discretion, and make due return to me of what you shall do in the premises.

By order of the Committee of Investigation.

....., Chairman.

A copy of the subpœna, with the name of each person inserted, should be attached to this order. The following is a suitable form of return:

To the ....., Chairman:

Sir.— In obedience to your order, hereto attached, I have served upon the persons named in the notice to appear as therein directed.

The times and manner of serving such notices were as follows:

Names.	Date when served.	Manner of service.

Signed. .....

Personally appeared before me this ..... day of ....., 19..., ..., who, being duly sworn, deposes and says that the foregoing is a true return.

.....,
Chairman of Committee of Investigation.

Should the person notified refuse to appear and be sworn, or should he refuse, after being sworn, to answer any question put to him by the committee touching the matter to be investigated, it is a contempt of the House and should be so reported to the House by the committee.

The House may thereupon cause the arrest of the offender, and after hearing his excuse adjudge such punishment, by fine or imprisonment, or both, as it shall deem proper.

Witnesses summoned in pursuance of a resolution of the House are entitled to compensation for their

services. This is paid by the Treasurer, on the warrant of the Comptroller. The accounts are audited by the committee, and a certificate in the following form is signed by the Chairman, upon the authority of which the Comptroller draws his warrant:

STATE OF NEW YORK.

In Assembly, Albany, ..., 19...

Resolved (insert resolution).

Ordered, That Messrs. ....., ... and ..... constitute such committee.

By order,

....., Clerk.

At the Capitol in the City of Albany,

...., 19..

I certify that, in pursuance of the foregoing resolution, ... was duly summoned to attend before the committee of the Assembly, appointed in accordance therewith, and that he appeared and gave testimony in the matter embraced in the resolution. I further certify that this witness resides at ..... in ..... county, distance ..... miles from the Capitol, and that the lawful allowance for his services, expenses and attendance, as fixed by the committee (pursuant to section 62 of chapter 682 of the Laws of 1892), is as follows:

.... miles travel, coming and returning, at .. cts. per mile. .....$

.... day's attendance, $..... per day

Total . . . .$

....., Chairman.

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THE STATE PRINTING LAW.

CHAP. 60, LAWS OF 1909.

AN ACT relating to state printing, constituting chapter fifty-eight of the consolidated laws.

Article I. Short title (§ 1).
II. General provisions (§§ 2–15).
III. Laws repealed; when to take effect (§§ 30, 31).

ARTICLE I.

Short Title.

§ 1. **Short title.**— This chapter shall be known as the "State Printing Law."

ARTICLE II.

General Provisions.

Section 2. Subject.
3. Exemptions.
4. Printing board.
5. Powers and duties of printing board.
6. Proposals for legislative printing.
7. Investigation as to facilities of bidder.
8. Printing legislative journals.
9. Printing bills.
10. Printing messages and reports.
11. Extra copies of messages and reports.
12. Department printing.

Section 13. Printing session laws.
14. Right to annul contracts.
15. Complaints against contractor.

§ 2. **Subject.**— The public printing payable by the state shall be divided into three parts. The first, known as the legislative printing, shall include the bills, documents, calendars, journals, substitutes for engrossed bills and memorials of both houses of the legislature, together with the necessary binding of said bills, journals and documents. The second, known as the department printing, shall include the blanks, circulars, blank books, pamphlets, envelopes, letter and note heads, other than those required for the use of the legislature, and all other printing work of the various departments and institutions of the state, other than the legislature, except as hereinafter specifically exempted, as well as the legislative manual. The third, known as the printing of the session laws, shall include the printing of all slips of the laws, the publication of the official and public editions of the session laws complete and the binding thereof. Each of the three divisions of the state printing shall be let by public contract in the manner hereinafter provided. Separate contracts may be made at any time for engraving, lithographing, wood-cuts, maps or for any description of printing or any article of stationery not specifically mentioned in the contract and involving an expense of more than five hundred dollars.

§ 3. **Exemptions.**— All of the printing now done or performed in the prisons of the state under and pur-

suant to the provisions of law, such printing as may be done in any of the state charitable of benevolent institutions for the benefit of such institutions, the printing of examination question papers in the rooms of the university of the state of New York by its employees, the stationery and blank books used by the legislature, the bulletins issued by the Geneva and Ithaca experimental stations, and the printing authorized by the election law, shall be exempted from the provisions of this chapter.

§ 4. **Printing board.**— The printing board shall consist of the secretary of state, the comptroller and the attorney-general.

§ 5. **Powers and duties of printing board.**— The said printing boards shall:

1. Have the general control and supervision of all printing done for the state and make such general and special regulations in reference thereto as may be deemed advisable.

2. Direct the manner, form, style and method of the execution of all work to be performed.

3. Employ the necessary clerk hire, which, together with office expenses, shall be paid for out of the fund for legislative printing and shall not exceed the sum of ten thousand dollars per annum.

§ 6. **Proposals for legislative printing.**— The printing board shall, on or before the first day of May in each year, give notice in two public newspapers of different political faith published in each of the cities of New York, Albany, Troy, Syracuse, Rochester and Buffalo,

that they will, thirty days after the publication of such notice, and on a day named therein, receive sealed proposals for the whole of the legislative printing work for one year commencing on the first day of October, next thereafter, to be performed in the manner to be prescribed in such notice. Upon receiving such proposals the printing board shall enter into a contract with the person, corporation or firm who shall make the lowest bid, and it may discriminate in favor of such bid as it may deem most favorable to the state. All work contracted to be done on order at the option of the state shall be considered in ascertaining the lowest bid on a basis of the amount of such work of the various kinds done in the preceding year. The number of ems of composition, pages printed and amount of work done of the various kinds during the preceding year shall be published in the notice for proposals. The successful bidder, upon entering into or prior to the execution of the contract, and in consideration thereof, shall give security to the people of the state of New York to the satisfaction of the printing board, for the faithful performance of the said contract, which shall be made and continued in force for one year commencing on the first day of October next after the opening of the bids. Such board shall have the right to reject any and every proposal or proposals if deemed unfavorable or disadvantageous to the state, and to readvertise until satisfactory and advantageous proposals shall be received, and shall so readvertise whenever any contract shall be annulled or abrogated, as provided by this chapter. The printing board shall

furnish blanks to all persons desiring to propose or bid for the legislative printing, which shall properly set forth the various items upon which bids will be received, as provided and described in the notice of publication. To every bid there shall be annexed a satisfactory guaranty for the proper performance of the contract by the guarantor, certified by the county judge of the county, or a supreme court judge of the district where the guarantor resides, that said guarantor is a freeholder and able to make good his guaranty, together with a certified check, cash or New York draft to the amount of twenty thousand dollars.

§ 7. **Investigation as to facilities of bidder.**— The state printing board shall appoint two inspectors, who shall investigate and report to said board on the qualifications and facilities of any person, firm or corporation proposing to perform any contract for which provision is made in this chapter; and no such contract shall be awarded to any bidder until the printing board shall have been satisfied, by such investigation, that the facilities and equipment of such bidder are ample and sufficient to insure the proper performance of said contract.

§ 8. **Printing legislative journals.**— There shall be printed by such contractor, within forty-eigth hours after the receipt of the copy from the clerks of the senate and assembly, seven hundred and eighty-nine copies of the journals of each house. As soon as they are printed he shall deliver them folded, stitched and trimmed as follows: To the superintendent of docu-

ments of the senate, one hundred and eighty copies; to the superintendent of documents of the assembly, two hundred and ninety copies; to the state officers, forty copies; to the state library, two copies; and the remaining copies, gathered and collected in the order of their numbers, in volumes of not less than one thousand pages, with the indexes thereto, properly compiled and bound, shall be delivered by him, as soon as practicable after the close of the session, to the clerks of the senate and assembly respectively.

§ 9. **Printing bills.**— There shall be printed by such contractor, within twenty-four hours after the receipt of the copy, one thousand copies of each bill. As soon as they are printed he shall deliver them as follows: To the superintendent of documents of the senate, two hundred and seventy copies; to the superintendent of documents of the assembly, six hundred and seventy copies; to the state library, two copies; to the state officers, forty copies; and the remaining copies, gathered and collected in the order of their numbers with the indexes thereto, properly compiled and bound, shall be delivered by him as soon as possible after the close of the session to the clerks of the senate and assembly respectively; and there shall be printed at the same time by such contractor, in addition to the one thousand copies of each bill heretofore provided for in this section, three hundred copies of any or all general senate bills, as designated by the clerk of the senate, and delivered to the superintendent of documents of the senate; also three hundred copies of any or all general assembly bills, as designated by the clerk of the

assembly, and delivered to the superintendent of documents of the assembly; also five copies of such substitutes for engrossed bills as shall be ordered by the clerks of the senate and assembly.

§ 10. **Printing messages and reports.**— There shall be printed by such contractor, as promptly as possible after the receipt of the copy thereof, seven hundred and eighty-nine copies of the messages from the governor, reports of standing or select committees, which shall not include testimony taken by such a committee, when printed for the use of the committee by the order of either house; and reports and communications made in pursuance of law, when ordered by the house to which such message, report or communication shall be made. As soon as they are printed he shall deliver them folded, stitched and trimmed as follows: To the superintendent of documents of the senate, one hundred and eighty copies: to the superintendent of documents of the assembly, two hundred and ninety copies; to the state officers, forty copies; to the state library, two copies; and the remaining copies, gathered and collected in the order of their numbers and in volumes of not less than one thousand pages, with the indexes thereto, properly compiled and bound, shall be delivered by him as soon as possible after the close of each session to the clerks of the senate and assembly respectively. The quality and style of the printing, paper and publication shall be the same in the legislative printing as in the year eighteen hundred and ninety-seven, and no change shall be made therein except with the consent of the officers or body by which the copy

is furnished. The annual reports of the superintendent of insurance, superintendent of banks, public service commissions, state commissioner of excise and comptroller shall be printed within such reasonable time after the delivery of the copy thereof as shall be prescribed by the officers charged with letting the contract for legislative printing.

§ 11. **Extra copies of messages and reports.**— In addition to the usual number of regular reports made by the state officers and institutions, there shall be printed as extra copies of legislative documents for the use of the respective departments, institutions and boards: of the governor's message, two thousand copies, one thousand for the governor and one thousand for the legislature; of the comptroller's report of the finances of the state, fifteen hundred copies; on the canals, two hundred and fifty copies; of the state treasurer's report, seven hundred copies; of the attorney-general's report, seven hundred copies bound in cloth, three hundred for the use of the attorney-general and four hundred for the use of the legislature; of the state engineer and surveyor's report, one thousand copies; of the report of the superintendent of insurance, four thousand copies, as provided by the insurance law, for the use of the department, and one thousand copies for the use of the legislature; of the report of the adjutant-general, one thousand copies bound in cloth; of the report of the superintendent of public works, one thousand five hundred copies; of the report of the superintendent of state prisons, one thousand five hundred copies bound in cloth; of the report of the state board of charities, one

thousand five hundred copies; of the report of the state board of health, two thousand copies; of the report of the department of labor, three thousand five hundred sets, one thousand sets thereof for the use of the legislature; of the report of the state commissioner of excise, one thousand five hundred copies, five hundred copies thereof for the use of the legislature; of the report of the civil service commission, one thousand copies; of the report of the department of agriculture, to be bound in three volumes as directed by the commissioner, seven thousand sets, two thousand sets for the use of the department and five thousand sets for the use of the legislature; of the volumes containing the reports of the Geneva and Ithaca experiment stations, two thousand additional copies for the use of the trustees thereof; of the report of the bureau of farmers' institutes, two thousand additional copies for the use of the bureau; of the report of the state commission in lunacy, one thousand five hundred copies for the commission, and five hundred copies for the legislature; of the report of the state board of tax commissioners, three thousand copies, two thousand for the state board of tax commissioners and one thousand for the legislature; of the regents' reports, one thousand copies; of the state library report, one thousand copies; of the state museum and natural history report, one thousand copies; of the annual reports of the public service commissions, five thousand copies of each, all bound in cloth, one thousand of each for the use of the legislature and four thousand for each commission, said four thousand to include the five hundred copies provided for

in the railroad law; of the report of the commissioner of education, fifteen thousand copies, all bound in cloth, to be distributed by that officer as follows: eleven thousand three hundred copies for the school districts, being one copy for each school district, nine hundred copies to school commissioners and city superintendents of schools, two hundred copies to the state normal and training schools, three hundred copies to academies and high schools, one thousand copies to members and officers of the legislature and state officers, one thousand copies for the use of the commissioner of education, also three hundred copies printed on forty-four pound calendered paper, bound in leather, for exchange with superintendents of public instruction of the states and territories, and for distribution among public libraries; of the report of the superintendent of public buildings, five hundred copies, one hundred in cloth and the balance in paper; of the state geologist's report, one thousand five hundred copies, one thousand for the legislature and five hundred for the state geologist; of the report of the state historian, two thousand two hundred copies for the historian and five hundred copies for the duplicate department of the regents; of the report of the forest, fish and game commission, two thousand copies for the use of the commission, five hundred copies for the duplicate department of the regents, and six thousand copies for the use of the legislature, the report to be printed on calendered paper with such illustrations as may be required; of the report of the Grand Army of the Republic, department of New York, one thousand copies for the use of the Grand Army; of the report of the United Spanish War Veterans, department of New York, one thousand copies for the use of the said organization; of the report of the state superintendent

of banks, one thousand copies, as provided in the banking law; of the report of the fiscal supervisor of state charities, fifteen hundred copies; of the report of the state water supply commission, two thousand five hundred copies; of the report of the state highway commission, two thousand copies; of the report of the state probation commission, fifteen hundred copies; of the report of the court of claims, fifteen hundred copies bound in buckram; and for all other institutions established by the state, when their printing is not done by the institutions, five hundred copies each. From the number of reports hereinbefore authorized there shall be delivered by the legislative printer to the regents for the use of its duplicate department such number of copies of said reports as the commissioner of education may certify before the first printing to be necessary for distribution or exchange, not in any case, however, to exceed fifty copies. Whenever any department shall, under the provisions of law, issue a portion of its annual report in advance in the form of bulletins, such bulletins shall be printed by the contractor for the legislative printing at the rates provided for in his contract. In the case of any printing authorized by this section, or of any printing hereafter authorized by resolution of either branch of the legislature or by a concurrent resolution thereof, no extra charge shall be made except for extra paper or work beyond that required by the terms of the contract actually furnished with the approval of the comptroller, and for such extra paper and work the charge allowed shall not exceed the current market rates. Composition shall not be charged a second time on matter printed from type already set or plates made at state expense, but the comptroller may make suitable allowance for handl-

ing of plates and reimposing type forms. In all cases where illustrations are used, the engravings and plates shall forthwith become the property of the state, and thereafter no charge shall be made for their subsequent use, except that the comptroller may make a suitable allowance for the handling of the plates. All of the extra copies of the reports mentioned in this section, except as otherwise provided, shall be bound in paper covers, unless a report shall embrace more than three hundred pages, in which case the whole number of extra copies shall be bound in cloth. Whenever any officer, bureau, board, commission, or any corporation or association shall make to more than one officer or body an annual report to be included in the legislative printing, the state printer shall not print such report for the year more than once at public expense, and the filing of a copy of the report as so printed shall be deemed a compliance with any law requiring a report to any other officer or body than the one to which the original manuscript report was submitted; and any institution which makes a report to any bureau, department or commission, which report is thereafter included in the annual report of said bureau, department or commission to the legislature, shall not be entitled for its own use, to additional copies of said report, unless otherwise specifically provided. No department, bureau or institution shall be entitled to the extra copies of the messages or reports herein provided unless the whole of the text thereof is placed in the hands of the legislative printer on or before the last day of the legislative session to which such message or report is submitted. All copies of messages and reports printed for the use of the legislature shall be delivered, one-third to the clerk of the senate and two-thirds to the clerk of the assembly,

and shall be distributed as said clerks, respectively, shall direct.

§ 12. **Department printing.**— The said printing board shall, on or before the first day of June in each even numbered year, give notice in two newspapers of opposite political faith in each judicial district of the state, that they will, thirty days after the publication of such notice and on a day named therein, receive sealed proposals for the whole of the department printing provided to be done under this chapter, the work to be performed as prescribed by law and in the notice published by said board, for a period of two years from and after the first day of October following the publication of said notice. Said notice to bidders shall be prepared by said printing board, setting forth in the advertisement, as near as may be, the amount of work which was performed during the preceding year of the various kinds called for by the proposal. To every bid there shall be annexed a satisfactory guaranty for the proper performance of the contract by a guarantor, certified by the county judge of the county or a supreme court judge of the district where the grantor resides, that said grantor is a freeholder and able to make good his guaranty together with a certified check on some state or national bank for the sum of ten thousand dollars or the same amount in lawful money. Said board shall have the right to reject any proposal or proposals, if deemed unfavorable or disadvantageous to the state, and readvertise for proposals for the same until advantageous and satisfactory bids shall be received, and

shall so readvertise whenever any contract shall be annulled or abrogated, as provided by this chapter. At the expiration of the period of publication of said notice, and at the time therein mentioned, the said board shall open said proposals and enter into a contract with such person, corporation or firm as shall make the lowest offer, and it may discriminate in favor of such bid as it may deem most favorable to the state, computed upon the basis of the amount of work done during the preceding year of the various kinds called for by the proposal, and such person, corporation or firm shall give security to the people of the state of New York, for the faithful performance of the contract in an amount and in the form to be approved by said printing board. The printing board shall furnish all persons, desiring to propose or bid for the department printing, blanks for proposals or bids for such printing in the form following:

To the honorable the secretary of state, comptroller and attorney-general:

..... (name of firm and place of business) propose to do the public printing payable by the state, other than legislative printing, for the state of New York, at the prices and on the conditions herein named, and agree to comply fully with the requirements of law relative to the said printing, and perform such work in quantity, quality and manner set forth, described and provided in the advertisement or notice calling for proposals for said printing, to wit:

Circular and blanks.

Size number naught. Four and one-half by five and one-half inches or under; on number one paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional, at .....

Size number one. Five and one-half by eight and one-half inches or under; on number one paper, for one hundred copies, exclusive of composition, at..... .....; each one hundred copies additional, at .....

Size number one. Five and one-half by eight and one-half inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at .....

Size number one. Five and one-half by eight and one-half inches or under; on number three paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional at .....

Size number two. Eight and one-half by eleven inches or under; on number one paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional, at .....

Size number two. Eight and one-half by eleven inches or under; on number two paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional, at .....

Size number two. Eight and one-half by eleven inches or under; on number three paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional, at.....

Size number two. Eight and one-half by eleven inches or under; on number four paper, for one hundred copies, exclusive of composition, at .....; each one hundred copies additional, at.....

Size number three. Eleven by seventeen inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number three. Eleven by seventeen inches or under; on number two paper, for one hundred copies; exclusive of composition, at.....; each one hundred copies additional, at.....

Size number three. Eleven by seventeen inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number three. Eleven by seventeen inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number four. Seventeen by twenty-two inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number four. Seventeen by twenty-two inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number four. Seventeen by twenty-two inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number four. Seventeen by twenty-two inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number five. Eight and one-half by fourteen inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number five. Eight and one-half by fourteen inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number five. Eight and one-half by fourteen inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number five. Eight and one-half by fourteen inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number six. Fourteen by seventeen inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number six. Fourteen by seventeen inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number six. Fourteen by seventeen inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number six. Fourteen by seventeen inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number seven. Seventeen by twenty-eight inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number seven. Seventeen by twenty-eight inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number seven. Seventeen by twenty-eight inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number seven. Seventeen by twenty-eight inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number eight. Nineteen by twenty-four inches or under; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number eight. Nineteen by twenty-four inches or under; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number eight. Nineteen by twenty-four inches or under; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number eight. Nineteen by twenty-four inches or under; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number nine. All sizes above nineteen by twenty-four inches; on number one paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number nine. All sizes above nineteen by twenty-four inches; on number two paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number nine. All sizes above nineteen by twenty-four inches; on number three paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Size number nine. All sizes above nineteen by twenty-four inches; on number four paper, for one hundred copies, exclusive of composition, at.....; each one hundred copies additional, at.....

Composition at..... per one thousand ems extra, tenpoint standard, measuring to edge of printed lines only.

Paper for circular and blanks to be of the following weights and quality:

For sizes numbers naught, one, two, three and four, paper number one, seventeen by twenty-two equal twenty-four-pound Clifton or its equivalent. Paper number two, seventeen by twenty-two equal twenty-four-pound Scotch ledger or twenty-eight-pound Clifton or their equivalents. Paper number three, seventeen by

twenty-two equal twenty-eight-pound Scotch ledger, Weston's ledger or their equivalents. Paper number four, seventeen by twenty-two, thickness number twenty-five, Crane's bond or its equivalent.

For sizes numbers five, six and seven, paper number one, seventeen by twenty-eight equal thirty-two-pound Scotch ledger or its equivalent. Paper number two, seventeen by twenty-eight equal thirty-six-pound Weston's ledger or its equivalent. Paper number three, seventeen by twenty-eight equal forty-pound Weston's ledger or its equivalent. Paper number four, seventeen by twenty-eight equal thickness number twenty-five, Crane's bond or its equivalent.

For size number eight, paper number one, nineteen by twenty-four equal thirty-two-pound Clifton or its equivalent. Paper number two, nineteen by twenty-four equal thirty-six-pound Scotch ledger or its equivalent. Paper number three, nineteen by twenty-four equal forty-four-pound Weston's ledger or its equivalent. Paper number four, nineteen by twenty-four equal thickness number thirty-six, Crane's bond or its equivalent.

For size number nine, paper number one, to equal in thickness and quality seventeen by twenty-eight equal thirty-six-pound Clifton. Paper number two, to equal in thickness and quality seventeen by twenty-eight equal forty-pound Weston's ledger. Paper number three, to equal in thickness and quality nineteen by twenty-four equal forty-four-pound Weston's ledger. Paper number four, to equal in thickness and quality nineteen by twenty-four Crane's bond number forty-three.

For books or pamphlets.

Composition for each one thousand ems plain matter, at.....

Paper, presswork, folding, gathering, collating, stitching and trimming, for each one hundred copies of eight pages, at.....

For each additional one hundred copies of eight pages, at.....

For composition and printing postal cards or stamped envelopes, each one hundred copies on one side at.....

For envelopes (per one thousand, plain or printed).

Fifty-pound or XX, number one rag. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

Sixty-pound or XXX, number one rag. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

Linen, number twenty-four Japanese. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

For envelopes (per one thousand, lithographed).

Fifty-pound or XX, number one rag. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

Sixty-pound or XXX, number one rag. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

Linen, number twenty-four Japanese linen. Number five, at.....; number six and one-quarter, at .....; number six and three-quarters, at .....; number nine, at.....; number ten, at.....; number eleven or twelve, at.....

For letter and note headings (printed from type).

For letter headings. On number twelve paper, first five hundred, at.....; each five hundred additional, at.....; on number fifteen paper, first five hundred, at.....; each five hundred additional, at.....

For note headings. On number twelve paper, first five hundred, at.....; each five hundred additional, at.....; on number fifteen paper, first five hundred, at.....; each five hundred additional, at.....

For letter and note headings (lithographed).

For letter headings. On number twelve paper, first five hundred, at.....; each five hundred additional, at.....; on number fifteen paper, first five hundred, at.....; each five hundred additional, at.....

For note headings. On number twelve paper, first five hundred, at.....; each five hundred additional, at.....; on number fifteen paper, first five hundred, at.....; each five hundred additional, at.....

Paper for letter and note headings to be of the following weights and quality: Number twelve paper, seventeen by twenty-two, number twenty Crane's Japanese, twenty-pound bankers' linen, twenty-four-pound United States linen; number twenty-five Agawam bond, twenty-four-pound Old Berkshire, or their equivalents. Number fifteen paper, seventeen by twenty-two, twenty-eight-pound Weston's ledger, twenty-eight-pound Crane's linen ledger, twenty-four-pound Japanese linen, or their equivalents. Circulars may be printed in one or more colors. Blanks may be ruled on a ruling machine, ruled and printed or printed only, and for circulars or blanks, one leaf, or two pages will count as a circular or blank, viz., two pages, one circular or blank; four pages, two circulars or blanks, et cetera. Where rule and figures are set in four or more columns to a page, the composition may be charged at double price. The term pamphlet under this contract shall mean eight or more printed pages stitched and trimmed, when bound temporarily or permanently with or without paper

covers, and shall be reckoned on a basis of sixteen pages to a sheet, standard size, either twenty-five by thirty-eight or twenty-seven by forty-one. When a pamphlet is twenty-four pages to a sheet, twelve pages shall be the equivalent of a signature of eight pages; and when thirty-two pages to a sheet, sixteen pages shall be the equivalent of a signature of eight pages, (or in other words, one-quarter of a sheet printed both sides) in reckoning the basis of compensation. And we do further agree to do all work not specifically set forth in this contract at prices which shall not be above those current in New York or Albany.

Signed .....
(Doing business at .....)

Dated .....

I hereby guarantee that the above person will, if his bid be accepted, enter into a contract according to the terms thereof, and give the security required by law within ten days from the time he shall receive notice of the acceptance of his bid.

Dated .....

I hereby certify that the above guarantor is a freeholder, and able to make good his guaranty.

....., County judge.

§ 13. **Printing session laws.**— The said printing board shall, on or before the first day of June in each year, give at least thirty days' notice in at least two newspapers published in the city of Albany, that on or before a specified day they will receive sealed proposals

for the printing and delivery at the office of the secretary of state, within three days after a copy thereof shall have been furnished, of the slips of the session laws in such manner as the secretary of state shall order, and for the printing and publishing for the use of the state of three thousand copies, or such additional number as the legislature may by concurrent resolution or otherwise order, of the session laws, with the indexes thereto, and such other matters as are required to be published therewith, together with the binding thereof, the work to be done in the city of Albany in the same style of execution as to type and paper as heretofore furnished. Said notice shall call for the compiling and binding of the session laws in such number of volumes as the secretary of state may direct, and shall call for the terms upon which copies of the session laws will be furnished to the public after the completion and delivery of the state edition, and of the places in the cities of Albany and New York where the same will be kept on sale. To every such bid there shall be annexed a satisfactory guaranty for the proper performance of the contract by a guarantor, certified by the county judge of the county or a supreme court judge of the district where the guarantor resides, that said guarantor is a freeholder and able to make good his guaranty. At the expiration of the period set forth in the notice and upon the day therein named the said printing board shall open said proposals and enter into a contract for the succeeding calendar year with the person, corporation or firm who shall make the lowest bid and furnish security, to be approved as to sufficiency

and form by said board, and it may discriminate in favor of such bid as it may deem most favorable to the state and to the public. The right to reject any and every proposal if deemed unfavorable or disadvantageous is reserved to the printing board, and said board may readvertise until bids advantageous to the state have been secured. The basis of computation shall be the number of slips of the laws printed the preceding year and the state edition of the session laws, provided that when the price to the public of the edition of the session laws seems exhorbitant the said board may reject any and every bid for such cause. The secretary of state, after the execution of the contract, may direct the session laws to be printed in two or more volumes if they can not conveniently be printed or published in one.

§ 14. **Right to annul contracts.**— Upon the failure or non-performance of the terms of any of the contracts set forth in this chapter on the part of the contractors with the state, the printing board may annul the contract in which default is made and the comptroller shall withhold payment from the contractor for all work done by him until the damage to the state shall be ascertained by proper adjudication, and the said board may readvertise and enter into a contract for the balance of the uncompleted term of any contract so annulled or abrogated in the manner prescribed in the provisions of this chapter.

§ 15. **Complaints against contractor.**— Complaints for violation of any of the terms of a contract on the part

of the contractor for state printing, shall be made in writing to the printing board, who shall and are hereby empowered and directed, in their discretion, to take such action as will afford the necessary and proper relief.

ARTICLE III.

Laws Repealed; When to Take Effect.

Section 30. Laws repealed.
31. When to take effect.

§ 30. **Laws repealed.**— Of the laws enumerated in the schedule hereto annexed, that portion specified in the last column is hereby repealed.

§ 31. **When to take effect.**— This chapter shall take effect immediately.

SCHEDULE OF LAWS REPEALED.

Laws of	Chapter	Section
1784.....	65.....	38.
1812.....	239.....	18.
1814.....	20.....	All (38th Sess.).
1814.....	200.....	20, 21.
1816.....	236.....	18.
1821.....	65.....	All.
1823.....	97.....	All.
1824.....	326.....	All.
1832.....	114.....	All.
1840.....	1.....	All.
1843.....	4.....	All.
1870.....	113.....	All.
1875.....	634.....	1, ¶ 109.

Laws of	Chapter	Section
1892.....	643.....	All.
1892.....	682.....	70–79.
1893.....	24.....	3.
1894.....	732.....	All.
1895.....	859.....	1, pt. amending last two sentences of L. 1892, ch. 378, § 19.
1898.....	187.....	All.
1901.....	507.....	All.
1905.....	760.....	All.
1906.....	330.....	All.
1906.....	359.....	All.
1906.....	417.....	All.
1906.....	476.....	All.
1908.....	274.....	All.
1908.....	275.....	All.

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THE CLERK'S MANUAL.

OPENING PROCEEDINGS AND ORGANIZATION OF THE TWO HOUSES.

The Constitution provides (Art. X, § 6) that the Legislature shall, every year, assemble on the first Wednesday in January. The place is designated by law as "the Capitol in the City of Albany." Usage has established twelve o'clock noon as the hour of meeting, and the meeting hour thereafter is fixed by resolution of each house at eleven o clock a. m. Tuesdays. Wednesdays and Thursdays, ten o'clock a. m. Fridays and 8.30 p. m. Mondays.

In the Senate.

On the day appointed by the Constitution, and at the hour which usage has established, the Lieutenant-Governor, ex officio President of the Senate, takes the chair, and calls to order.

Such as are present of the Senators elect, if it be a new Senate, as have not already taken, subscribed and filed the oath in the office of the Secretary of State, take and subscribe the oath enjoined by the Constitution [Art. XIII, § 1] which is administered by the Lieutenant-Governor — the Clerk of the previous Senate acting as such, and calling the roll from the official list furnished by the Secretary of State.

If a quorum be present, the Senate proceeds at once to elect its officers; and having completed its organization, and adopted rules for government — usually those of the previous Senate — the fact is communicated to the Governor and Assembly, through committees, named by the Lieutenant-Governor, of two Senators each.

If it be not a new Senate, the body being already organized, is in a condition, a quorum being present, at once to proceed to business, on being called to order.

The reading of the Governor's annual message, and the adoption of the customary resolutions at the opening of the session, complete usually the first day's proceedings.

In the Assembly.

In the absence of any statutory provision, it has been usual for the Clerk to call the Assembly to order, put a motion for the election of Speaker, and conduct proceedings generally until a Speaker is chosen. But it is within the province of the members to elect a temporary presiding officer, if they so desire, in cases where the election of a Speaker is protracted.

The Clerk is furnished by the Secretary of State with an official list of the members elect, which, under the changes in the Laws of 1909 (chap. 47), should also indicate those whose oaths of office have been filed as required by the above-mentioned chapter.

The oath of office may be administered by any officer authorized to take, within the State, the acknowledgment of the execution of a deed of real prop-

erty, or by an officer in whose office the oath is required to be filed, but, wherever administered, it must be duly subscribed, certified and filed in the office of the Secretary of State. The oath of office so taken should be in the following form:

State of New York,
County of..... } ss:

"I, ..., do solemnly swear (or affirm) that I will support the Constitution of the United States, and the Constitution of the State of New York, and that I will faithfully discharge the duties of the office of....., according to the best of my ability."

"And I do further solemnly swear (or affirm) that I have not directly or indirectly paid, offered or promised to pay, contributed, or offered or promised to contribute any money or other valuable thing as a consideration or reward for the giving or withholding a vote at the election at which I was elected to said office, and have not made any promise to influence the giving or withholding any such vote."

Subscribed and sworn to before me this .... day, ...

It is not necessary for any member to present his certificate of election unless his claim should be disputed. The certified list of the Secretary of State, presented to the Clerk, is sufficient to entitle any member who is named therein to his seat, unless it should be proved erroneous by the production of a proper certificate from the County Canvassers. The Secretary of State attends the opening session of the Assembly and administers the oath of office to such

members as are present who have not previously taken the oath.

After the swearing in of those members present by the Secretary of State who have not previously taken the oath of office, the roll is called by the Clerk, and, if a quorum be present, the House is competent to proceed to business.

The caucus of each party, for the nomination of its candidates for Speaker, Clerk, etc., is held in the Capitol on the evening previous to the organization, convening at eight o'clock. The party having the largest number of members occupies the Assembly Chamber for this purpose; the second largest the Assembly Parlor.

The election of Speaker may be by ballot, by resolution, or viva voce, as the House may order. It is usually, however, by viva voce. Each member, as his name is called, rises in his place and openly announces for whom he votes. The member receiving a majority of all the votes is declared elected, conducted to the chair by a committee named by the Clerk, or voted by the House, and immediately enters upon the performance of his duties.

The election of the remaining officers (viz., Clerk, Sergeant-at-Arms, Doorkeeper, two Assistant Doorkeepers and a Stenographer) is then proceeded with, either in the same manner or by one of the other modes named. Usually, to save time, the officers named after the Clerk, are elected by resolution, a member of the majority offering a resolution to appoint the majority caucus nominee, and a member of the minority

offering the name of the minority caucus nominee as an amendment.

The officers elect are, if present, immediately sworn by the Speaker, and enter upon the discharge of their duties.

Resolutions are then adopted for the appointment of committees to wait upon the Governor and Senate, and inform them that the House is organized and ready to proceed to business. As soon as these committees report, and a similar announcement is made from the Senate, the annual message of the Governor is presented, read by the Clerk and ordered printed and laid on the table for future consideration.

Committee to Wait Upon the Senate.

When this committee enters the Senate Chamber, it is conducted by the Sergeant-at-Arms of the Senate to a position within the circle and in front of the presiding officer. The Sergeant-at-Arms announces "A committee from the Assembly."

The Chairman of the committee then delivers its message, as follows:

"Mr. President:" (and after recognition by that officer) "This committee from the Assembly has been directed by that body to inform the Honorable the Senate that the Assembly is duly organized and ready to proceed to legislative business."

The committee immediately retires, and, on its return to the Assembly Chamber, passes up the main aisle, preceded by the Sergeant-at-Arms of the Assem-

bly, halts in front of the Speaker's chair, and delivers its report as follows:

"Mr. Speaker:" (and after recognition by that officer) "The committee appointed to wait upon the Honorable the Senate and inform that body that this House is organized and ready to proceed to legislative business, has the honor to report that they have performed that duty."

The members of the committee then take their respective seats.

To Wait Upon the Governor.

The message and report of the committee to wait on the Governor may be in the following forms:

(The Committee having arrived in the Executive Chamber, salutes the Governor, and the Chairman delivers its message as follows):

"This committee from the Assembly have been directed by that body to inform Your Excellency that the House is duly organized and ready to proceed to legislative business."

The Governor usually replies that he will communicate with the House by message in writing.

The report of the committee to the House is as follows:

"Mr. Speaker:" (and after recognition) "The committee appointed to wait upon the Governor and inform him that this House is organized and ready to proceed to legislative business, have the honor to report that they have performed that duty, and that His Excellency

has been pleased to say that he will presently communicate with the House by message in writing."

[These forms, with suitable variation, will suffice for the messages and reports of the committees to be made at the time of the final adjournment of the two Houses.]

After the reading of the Governor's message the members of the Assembly select their seats, which is done in the following manner:

A committee of two is appointed by the Speaker to prepare ballots for the drawing of seats, to examine the same and report to the Assembly; after which the members retire to the rear and back of the railing in the Assembly Chamber and as their names are drawn from the box, come forward and make their choice and retain such seat until the close of the drawing.

The Committee reports and recommends that all members serving their fifth term or longer be first entitled to select their seats, and that the balance of the seats be drawn in the following order: That members shall be divided into four classes, and be drawn in the order of their class.

1. Members serving the fourth term in the Assembly shall be placed in class one and their names drawn.

2. Members serving their third term in the Assembly shall be placed in the second class and their names drawn.

3. Members serving their second term in the Assembly shall be placed in class third and their names drawn,

and those serving their first terms, shall be placed in class four and their names drawn.

The drawing being completed, the House usually adjourns for one week to enable the Speaker to appoint the Committees.

Special Sessions.

When the House is in special session for a special purpose no other business is in order, even by unanimous consent.

This principle is recognized in the Constitution, Art. IV, § 4, which reads: "At extraordinary sessions no subject shall be acted upon, except such as the Governor may recommend for consideration."

Compensation of Officers and Members.

Each member is entitled by the Constitution to receive an annual salary of one thousand five hundred dollars, and one dollar for every ten miles he shall travel, in going to and returning from the Capitol, once in each session, on the most usual route. (Art. III, § 6.)

Chapter 37 of the Laws of 1909 provides that each member shall receive ten dollars per day from the commencement of the session, but the aggregate payment to each member shall not exceed twelve hundred

dollars during the session, and the balance to be paid on the final adjournment of the Legislature.

There is no compensation provided for extra sessions, the salary fixed by the Constitution being an annual salary, excepting, however, that Senators, when the Senate alone is convened in extraordinary session, or when serving as members of the court for the trial of impeachments, and such members of the Assembly, not exceeding nine in number, as shall be appointed managers of an impeachment, shall receive an additional allowance of ten dollars a day.

The mileage may be drawn for both ways on the first day of the session, or any subsequent day, according to the pleasure of the member. Per diem compensation can be drawn as it becomes due.

The member or officer of the Assembly desiring to draw, either mileage or per diem, applies to the financial clerk. This official has an office connected with the Assembly Chamber. A day's notice to the financial clerk is usually necessary. That is, the member signs on one day and receives his pay the day following. The Speaker certifies to the number of days' attendance or miles of travel. To this certificate is attached the receipt of the member for the amount due, which is paid by the Treasurer, upon the warrant of the Comptroller, in the same manner as other payments from the treasury. For the convenience of members, the Clerk makes an arrangement with one of the city banks to cash the certificate without waiting for the Comptroller's warrant, and keeps a messenger to procure the

funds in each case, so that the member is subjected to no inconvenience or delay in obtaining his pay.

No extra compensation of any kind can be allowed to a member, it being forbidden by the Constitution. (Art. III, § 28, and Art. X, § 9.) The compensation of each officer is provided for by § 10 of the Legislative Law.

Post-Office Arrangements.

The Senate and Assembly post-offices are each in charge of a Postmaster and one assistant. Here all mail matter may be deposited by members, whether letters, newspapers or public documents. The postage on all letters is prepaid by the Clerk.

It is the duty of the Postmaster of the House to forward all mail matter in time to meet the arrangements for closing the principal mails at the Albany post-office.

The Assembly post-office is kept open continuously during the legislative session from eight a. m. until six p. m., and during evening sessions. On Sundays from eight to ten a. m., and five to six p. m.

The Senate post-office is kept open continuously during the legislative session, from 8.30 a. m. until 5.30 p. m., and at all time when the Senate is in session.

DUTIES OF OFFICERS.

For the convenience of both members and officers, the following summary is given of the duties of the officers of the House, and applies generally to the officers of the Senate.

Speaker.

The duties of this officer are so fully defined by the rules, or settled by parliamentary practice and precedent, as to require no particular description here. In addition to preserving order and decorum, deciding points of order, putting questions, etc., it is his duty to certify to all bills passed by the House, and the pay bills of the members and officers. Every officer of the House is subordinate to the Speaker, and in all that relates to the prompt and correct discharge of official duty, is under his supervision. The officers and employes appointed by him are especially under his direction, and any dereliction of duty on their part should be reported to him.

He is also required by the Legislative Law, to designate the Assistant Doorkeepers, Messengers and Pages to attend upon the organization of the next Legislature, and also to designate not more than five officers of the House to remain not more than thirty days after the session closes to finish up the work of the House.

Clerk.

All the inner regulating machinery of the House may be said to be in charge of the Clerk. He has the care and custody of all the papers and records, and arranges in its proper order, from day to day, after its inception, all the business of the House. He is, in fact, the principal administrative officer of the House, and must see that all the rules and orders, relating to daily business, are executed. He must, in order to have a proper knowledge of the affairs of his department, apportion,

systematize and personally supervise the labors of all his subordinates, and, when not called therefrom by more important duties, should officiate in person at the reading desk. He is the disbursing officer of the House, and, under the supervision of the Comptroller, purchases the articles required for its use. The duties of his subordinates are defined and directed by him.

Sergeant-at-Arms.

The Sergeant-at-Arms is, under the direction of the Speaker, the police officer of the House, to aid in enforcing order in cases where his intervention is necessary. He should observe whether the Doorkeepers are at their posts and attend properly to their duties. Any omission on their part, or on the part of any officer or employe in his own department, he should report at once to the Speaker. The Pages are under the charge of the Messenger in charge of Pages, and he should see that they are properly instructed, attentive to their duties, and well disciplined, and also see that the Pages keep the files of the members in proper order. Any complaints or requests with respect to files should be made to him. The Sergeant-at-Arms, or his assistant, should be in attendance two hours before each session, and during the time committees are sitting, as well as during the sessions of the House.

Stenographers.

The Assembly rules define the duties of the Stenographer as follows: It shall be the duty of the Stenographer of the Assembly to be present at every session of

the House. He shall take stenographic notes of the debates in the House and in Committee of the Whole, and shall furnish a copy of the same, written out in long hand, to any member applying therefor, upon the payment to said Stenographer of ten cents for each folio, which charge said Stenographer may receive in addition to his fixed compensation. The stenographic notes of the debates shall be filed with the Clerk, and shall form a portion of the archives of the House. Section 19 of the Legislative Law provides that "The Stenographers shall attend at every session of the body for which they are appointed or elected, and take stenographic notes of the debates of such body and in the Committees of the Whole thereof, and furnish a copy thereof, written out in long hand, to any member of such body. A sufficient number of general stenographers are employed to take care of the necessary Committee work, bill drafting and legislative work of members. They are under the supervision of the Clerk and application for their services should be made to the Clerk.

Doorkeeper and Assistants.

The business of the Doorkeeper, who also serves as Assistant Sergeant-at-Arms, is to attend, in person, the main door or entrance to the floor of the House, to admit no person who is not entitled to admission by the rules of the House, and to see that spectators are properly seated. He must see also that all Assistant Doorkeepers are at their posts and attend properly to their duties. He should be in attendance, with every assistant, at least an hour before each meeting of the House,

to see that no spectators are on the floor at the hour of meeting. He, together with one or more of his assistants, selected by rotation, should be in attendance during the recesses of the House, to prevent improper intrusion.

Postmaster and Assistant.

The business of the Postmaster is to take charge of all letters and other mail matter deposited with him, and to send them to the city post-office before the closing of each principal mail; to receive from the city post-office all mail matter addressed to members and officers of the House, and to keep it in the box assigned to each in the Assembly post-office, until called for or ordered by the person to whom it is addressed.

The first 150 boxes are assigned, in their order, to members occupying seats of a corresponding number.

The Postmaster or assistant must always be present in the post-office during the office hours prescribed by the rules.

Superintendent of Documents.

The business of the Superintendent of Documents is to receive from the printer all matter ordered by the respective Houses and to keep a book and to enter therein the time of reception by him of every such bill or document, and the number of copies received, and to cause a sufficient number of copies of every such bill or document to be immediately delivered to the Messenger in charge of Pages to be placed on the desks of the members. He should keep a particular account of all documents he receives from the printer, and indexes of the various documents in his custody, with their re-

spective numbers, so that they may be easily referred to when required. He should also keep a subject-index record of all Senate and Assembly bills introduced and printed. No bills or documents should be given out by him except upon the order of the Clerk. He is required to keep the document room open, not only during the sessions of the House, but at other hours prescribed by the rules, to receive bills and documents from the printer. As formerly noted, the placing of bills and documents on the files of the Assembly, is done by the Pages under the supervision of the Messenger in Charge of Pages.

Superintendent of Wrapping Department.

The wrapping department is located in the Lyon Block on Hudson avenue above the Market square. This department has charge of the transmission of all books and packages shipped by express under the direction of the clerks of the two houses. No express matter will be transmitted unless it bears the name or compliment stamp of the member or officer transmitting the same.

Janitor and Assistant.

The duty of these officers is to see that the rooms are lighted when needed during the sessions of the House or its committees; to provide a supply of water for drinking purposes, and to see that everything connected

therewith is kept in order; to wait upon committees when required; to carry books and stationery to and from the House, for the service of members or officers.

It is also the duty of these officers to attend in the Assembly Chamber and the rooms connected therewith, during all hours that they are open, to see that the property of the House or of members is not molested or abstracted; to observe whether the drawers of the members' desks are locked immediately upon their leaving the House, and, if not, to lock them and deliver the keys to their occupants; to gather up and preserve all loose property which members or others may leave on their desks or about the House and return the same to the owners.

Duties of Certain Officers Generally.

It is the duty of the Sergeant-at-Arms and assistant, the Doorkeeper and every Assistant Doorkeeper, the Janitor and assistant, to severally attend and officiate in the preservation of order, on all occasions when the Assembly Chamber is occupied by meetings of other bodies.

Libraries and Librarians.

The Senate and Assembly Libraries are in the west wing of the Capitol, and, in each House, adjoin the Clerk's room. They contain the Journals and printed documents of the Legislature from the organization of the government, the Revised Statutes and Session Laws of this State, and some other volumes of a public character, to which it is frequently necessary to refer. These are accessible to the members and officers of the Legisla-

ture. One copy of each work is required to be kept at all times in the Library.

Copies of the Revised Statutes are provided for each of the principal committees, which they may take to their rooms, but must return at the close of the session. This department is in the immediate charge of the Librarian and Assistant Librarian of the House for which elected.

The State Library is in the west wing of the Capitol. The large collection of books here deposited is open to any member who wishes to draw, subject to no conditions, except the return of the books in good order, within a reasonable time. This collection is in charge of the State Librarian.

It is the duty of the Librarian of either House to have charge and custody of its Library. He will allow no book to be taken from the Library by any person not a member, officer or reporter of the Legislature. He will require a written order for all books delivered, and see that all are returned before the final adjournment. He will always retain in the Library at least one copy of every book therein deposited. He will be held personally accountable for all property committed to his charge, and will be required to make good any deficiency which may occur through his neglect, error or unfaithfulness.

The Senate Library is open from 8.30 a. m. until 5 30 p. m., and the Assembly Library is open from 9 o'clock a. m. until 5 o'clock p. m.; and at all times when the House to which it belongs is in session. During these hours either the Librarian or assistant must be present in the Library.

The Index Department.

The Index departments of the two Houses are important, and furnish the only means by which a member may keep track of his legislation, or the legislation in which he is interested. From the introduction of a bill to its final disposition, every step is noted so that the exact position of a bill may at all times be known. The more important books kept by the Index department of the Assembly are as follows:

1. The Members' book, in which every member is given a page, and the action on his several bills is entered.

2. The Senators' book, in which all Senate bills are entered which have passed the Senate, together with the action thereon by the House.

3. The Introductory book, in which every bill is entered when introduced, and its order determines its introductory number, which never changes.

4. The Senate Reception book, in which each Senate bill which has passed the Senate is entered in the order of its reception, which order determines its reception number.

5. The Second Reading book, in which every bill is entered as soon as it is ordered to a third reading on its introduction, or in the event of its report by a committee of the House. From the order in this book bills receive their "second reading number."

6. The Third reading book, in which every bill is entered as soon as it is ordered to a third reading. From its order in this book bills receive their "third reading number."

It should be borne in mind that there is no record kept by the index department of either House of a bill of the other House until such bill has been passed in the House where introduced and transmitted to the other House. Therefore, if a member desires the record of any bill introduced in the Senate, which has not yet passed that body, he can only procure such record at the Senate Index desk.

Clerks to Committees and Committee Reports in the Assembly.

The duties of a clerk to a committee are not difficult and are easily mastered, provided the committee clerk will familiarize himself with the procedure of the Assembly and the details connected with his work, be attentive to his duties and perform his work with accuracy.

The majority of the committee clerks at each session of the Legislature are new appointees, unfamiliar with their duties, and the common error made by inexperienced clerks is the assumption that the duties of their office require no particular study, and in assuming that they understand the methods to be pursued by them without careful examination or inquiry. There are three officers of the House to whom the committee clerk may, at any time, look for directions in the performance of his duties, who are always ready and willing to furnish such information, these are, the Assistant Clerk, the Journal Clerk and the Index Clerk. The Assistant Clerk is in immediate charge of the clerks of committees

and is always ready to render to them any assistance necessary in the performance of their duties and to furnish them with any information which they may desire. An error made by a committee clerk must either be detected and corrected by the Journal Clerk or Index Clerk, or the subsequent record relating to the bill will be erroneous and serious delays will result which not only reflects upon the entire management of the desk, but may defeat important legislation. It is therefore important that no report be submitted by the clerk of a committee until he shall have first ascertained that it is absolutely correct. Except when the House is in session all of the information required in the making out of reports will be furnished by the Assistant Clerk, Journal Clerk or Index Clerk. It is much easier for any one of these officers to furnish the required information than it is to make out new reports or correct errors in those already made out, and there is no excuse for failure on the part of any committee clerk to submit his reports in correct form and any such failure will subject such clerk to just censure.

Every bill when introduced into the Assembly has given to it an introductory number. This number never changes and although the title and the body of the bill may be amended and changed the introductory number always remains the same and furnishes the only sure means of identifying a bill. This number is printed upon every bill and is designated on the bill and in the report as Int. No. ——. When the bill is printed the printer gives it a printed number; this number stands in the center of the top of the first page and is the number by which the bill is usually known.

When a bill is amended and reprinted it receives another printed number which follows the prior printed number in the center and at the top of the first page. The printed number is designated on the bill and in the report as No. ——. The committee clerk in making entries or in preparing reports of a bill is only concerned with the introductory number and the last printed number of the bill. Every Senate bill after being passed by the Senate, upon its receipt in the Assembly, is given what is known as a reception number.

The reception number is stamped by the Index Clerk upon the jacketed bill and original document copy of the bill delivered to the clerk, and is designated as Rec. No. ——, and corresponds in the procedure of the House in reference to Senate bills to the introductory number on Assembly bills. The Senate introductory number printed on the Senate bill is never used in making a report on a Senate bill, but the bill is identified and described by the House reception number and the last Senate printed number. When a Senate bill is amended and reprinted in the Assembly there appears a further variation which needs to be noted. In an Assembly reprint of a Senate bill there is printed upon the face of the bill the Assembly reception number, the Assembly reprint number and the last Senate printed number. The Assembly reprint number appears at the top of the page in the center, the reception number at one side and the last Senate printed number in the head-note below. A Senate bill may be amended and reprinted several times in the House and the last Assembly reprint number is always to be used. These

different classes of bills are described by numbers in the committee clerk's reports and upon the journal as follows:

An Assembly bill as "The Bill No. 25, Int. No. 20."

A Senate bill as "The Senate Bill No. 300, Rec. No. 65," or, if amended, as "The Senate Bill No. 225, A. Reprint No. 850, Rec. No. 75." It will be noticed that an Assembly bill in the Assembly is always referred to as "The Bill" and not as "Assembly Bill," while a Senate bill should always be designated as "The Senate Bill." An Assembly bill is properly described as "The Bill No. ——, Int. No. ——," which means "The Assembly bill, printed number ——, introductory number ——, while a Senate bill is properly described as "The Senate Bill No. ——, Rec. No. ——," meaning the Senate bill, printed number ——, reception number ——. The most common error with committee clerks is in confusing the printed and introductory numbers of Assembly bills and the using of Senate introductory numbers instead of the Assembly reception number of Senate bills. If the clerk will simply bear in mind the procedure above stated no such confusion can result. Bills are also identified by second and third reading numbers, these numbers are for the convenience and use of the Index Clerk indicating the progress of the bill and do not concern the committee clerk in making up his records, except in determining the position of the bill.

Procedure.

Every committee clerk upon notification of his appointment should report forthwith to the Assistant Clerk,

if appointed to a designated committee, for the purpose of receiving instructions, if appointed as a general committee clerk, to receive his designation and instructions. After having been designated to service upon a committee or committees he will first procure from the Assistant Clerk the keys to his desk and then secure the supplies required for his work, which include the record-book of the committee, committee report blanks, roll-calls, and incidental supplies, and in the case of important committees, file boards for Senate and Assembly bills for each member of the committee and clerk. As soon as the work of the session has commenced each committee clerk will, not later than the day prior to each day of meeting of his committee, report to the Index Clerk and ask for, receive and receipt for all bills referred to his committee. The Index Clerk will furnish him with one copy of each bill referred to his committee in printed form stamped as "original bill," each one of these bills is to be preserved by the committee clerk with his record-book and must be attached to and returned as a part of his report. When such bill is acted upon and ordered reported by the committee. The original bills are receipted for under their respective introductory or reception numbers. Upon receiving the original bills the clerk will make a list of such bills in the order of their printed numbers, go to the document room, which is situated midway between the lobby of the Assembly and the Assembly parlor, and from the Superintendent of Documents procure a sufficient number of copies of each bill for the use of his committee. The number so required is one copy for each member of the committee

and three copies for the clerk, in addition to the original bill received from the Index Clerk. After procuring these copies of the bills from the Superintendent of Documents he should go to his committee room and enter in his committee record-book the record of each bill, cutting out the title from one copy and pasting it into the record-book in the space indicated for such purpose. He should enter upon the record-book the printed number of the bill, the title of the bill and the introductory number, the person introducing the same and the date of its introduction. He should then make up a file of the bills for each member of the committee and two for himself, so that each member of the committee and the clerk shall have a complete file of each Assembly and Senate bill, and the clerk may have an extra file from which to cut out titles in making his report. He should also number the pages or bills of each file of bills from time to time and prepare an index of the same according to printed numbers, so that when a bill is called up for action by its printed number each member can at once turn to the bill on his file. Each committee while in session has an open session at which the different members appear and call up bills introduced by them for consideration and discussion; also an executive session at which no person is allowed to be present except the members of the committee and the clerk. As soon as the meeting of the committee is called to order by the chairman, he will direct the clerk to call the roll of members to ascertain if a quorum is present. The clerk should have his committee roll-call in readiness for such purpose. At the close of the open session it is the duty of the

clerk to exclude all persons other than members of the committee from the room and see to it that no person is allowed to enter until the close of the executive session. As each bill is considered it is the duty of the clerk under the direction of the chairman to call the roll of members and record their votes, which roll-call must be preserved and pasted in the record-book as a part of the record of the bill. Upon the conclusion of the executive session it is the duty of the clerk to prepare the reports of the committee upon the several bills acted upon by them in accordance with their action and deliver said reports to the chairman of the committee at the opening of the session of the House on the following day. As soon as he has completed the making up of his reports he should make the proper entries in his record-book in the space provided for the bill upon which action is taken, showing the character of the report, the date of the report, which is usually the day following the meeting of the committee, and the action taken by the committee, including the roll-call above mentioned. The discussions at an executive session are strictly secret and no information concerning the same should be divulged by the clerk except such as appear upon his official report and record. This rule is imperative and must be strictly adhered to. Reports of committees are submitted during the first part of each day's session and are examined by the Assistant Journal clerk to ascertain if they are in correct form, and it is the duty of the committee clerk to remain either in his room or in the chamber until such examination has been completed so as to rectify any error which he may have made and not compel

the Journal Clerk to take the time for such purpose from his other duties. In making out the reports of bills the clerk should first ascertain the position of the bill which he is to report and the character of the report which he is making and procure the proper blank form to be used in the making of such report. By the "position of a bill" is meant whether it is on the order of second reading or third reading or a recommitted bill, as the case may be, and is ascertained either from the printed head-note on the bill or the stamps thereon made by the Index Clerk on the original bill. By the "character of the report" is meant as to whether in accordance with the action taken by the committee it is to be reported favorably or adversely or for the consideration of the House, without amendment, with amendments, by substitute bill or with amendments to be reprinted and recommitted. In determining the kind of blank form to be used in making the report both the position of the bill and the character of the report as outlined must be taken into account, otherwise the report will be erroneous and misleading and result in confusion to the Index Clerk and the Journal Clerk.

In making out reports the following rules must be observed:

1. A separate report must be prepared for each bill ordered reported by the committee.

2. The original bill received by the clerk from the Index Clerk must be returned with the report and pinned thereto, but not permanently attached.

3. If a bill is amended by the committee the amendments so made must be written out in full upon the

original bill and returned with the report so that the bill returned will be in the exact and final form desired by the committee and ready for the printer. A statement of all amendments made must also be written out in full upon the blank report, such statement must indicate the page and line or lines in which amendments are made and the words inserted or stricken out so as to state in detail and proper form all amendments made to the bill. The title of the bill should be cut out of one of the extra copies in the possession of the clerk and pasted on the report within the space indicated for such purpose.

4. In writing out the amendments upon the original bill and in the report no abbreviations are permitted and no figures are allowed except for section numbers. Each page and line of a bill is separately numbered and if amendments are made by striking out certain words of lines of the bill, or by inserting words in the bill, the number of the page and the number of the line or lines in which words are stricken out or inserted must be stated in describing the amendments made, and unless the whole of certain lines are stricken out the words stricken out should be stated in full and all new matter inserted must always be written out in full. In case amendments are extensive they should be furnished in typewritten form and in duplicate, so that one copy of such amendments can be pasted upon the report and the other used in preparing the original bill for the printer.

5. If a substitute bill is reported for the original bill two copies of the substitute bill must be returned, one permanently attached to the report for the journal, the

other pinned to the original bill and the report for the printer.

6. In case Assembly bills shall be recommitted to the committee after having been engrossed and jacketed the amendments should not be written out upon the engrossed copy, but a document copy should be used for such purpose, and such document copy, together with the jacketed bill, should be attached to the report when it is submitted. Where amendments are made to a Senate bill they should not be written out upon the engrossed copy but upon a document copy which, together with the engrossed and jacketed Senate bill, should be attached to and returned with the report. In reporting bills care should be exercised that the bill carrying the last printed number is used, otherwise the report will be entirely erroneous. In the case of a bill amending existing law, Rule 11 of the Assembly provides that if such bill is reported with amendments which add new matter to the existing law such new matter must be underscored, and in case the amendments eliminate old matter from the existing law, such old matter must be enclosed in brackets. The reason for this is that in the printing of bills amending existing law the rules require all new matter added or inserted to be printed underscored, and all old matter eliminated to be enclosed in brackets, and the clerk in preparing the amended original bill for the printer must bear this in mind constantly, otherwise a reprint of the bill and consequent delay may result.

In determining the position of a bill and the proper blank to be used few errors will be made if the clerk will pay attention to the ordinary procedure of the

House. A bill has three separate readings. The first reading is upon its introduction, the second reading is usually after reference to and report by a committee, and the third reading is the order in which it has its final passage. By unanimous consent a bill may be ordered to third reading immediately after its introduction and first reading, and upon its reference to a committee so that it is upon the order of third reading when referred to a committee. After a bill has once been referred to and been reported by a committee and is again referred to a committee it is said to be recommitted and is known as a recommitted bill. A bill may be recommitted to a committee upon the order of second reading or third reading. Whenever a bill is ordered to third reading upon reference or is recommitted to a committee when it is upon the order of second reading or third reading, it must, when reported from the committee, be restored to the order in which it was prior to said reference or recommittal. A bill may also be reported by a committee with amendments to be reprinted and recommitted to a committee without formal action upon the part of the House. The distinction between bills which are referred or recommitted on the order of reading in which such action is taken must always be borne in mind and the form of blank must be used which is proper for each bill.

The reasons for adherence to the above rules will be easily understood if it be borne in mind that the report itself constitutes the journal sheet and the official journal record of the bill, while the bill attached to the report, in case of amendment, is at once transmitted to the printer and the bill as reprinted must correspond

in every particular with the journal entries as contained upon the report, otherwise there is a discrepancy between the printed bill and the journal record.

There is no difference in the method of reporting Senate and Assembly bills except that a different form of report bearing a different number and different color is used, so as to indicate at once to the Index Clerk and Journal Clerk upon the receipt of the report the character of the bill reported. The following are the forms used in reporting Assembly bills:

ASSEMBLY BILLS.

Report of a Bill, Favorable, without Amendment.

This is the ordinary form of report when a bill, after having been introduced and read for the first time, has been referred to a committee and said committee has voted to report the bill, as printed, favorably, without amendment:

Form No. 33.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill, introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported in favor of the passage of the same without amendment,

Which report was agreed to and said bill placed on the order of second reading.

Report of a Bill, Favorable, with Amendments.

This form is used where a bill has been introduced, read once and referred to a committee, and the committee has voted to report the bill favorably with amendments. In making such amendments it must be borne in mind that they must be stated in full in the report and must be written in the last document copy of the bill, so that the original bill attached to the report will be in correct form ready for transmission to the printer, and that the amendments so written in and the statement made in the report will correspond in every particular; also if the bill amended is designed to amend an existing law that all new matter inserted therein by way of amendment must be underscored and all old matter to be stricken out must be enclosed in brackets:

Form No. 34.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported in favor of the passage of the same with the following amendments:

(Here insert amendment written out in full.)

(To illustrate:)

Page 1, line 5, beginning with the word "such," strike out all down to and including the word "contain" in line 9.

Page 2, line 6, strike out words "such city is hereby authorized" and insert in place thereof *"said common council of said city may."*

Page 3, line 4, strike out word "an" and insert "a."
Page 4, line 10, enclose words "common council" in brackets and insert after the word "council" "*board of estimate and apportionment.*"

.....
.....
.....
.....,
Chairman.

Which report was agreed to, and said bill ordered reprinted, as amended, and placed on the order of second reading.

Report of a Bill, Advanced to Third Reading before Reference, and Reported Favorably without Amendment.

It often happens that when a bill, which is local in character, is introduced, in order to hasten its passage, by unanimous consent, it is advanced to third reading and then referred to a committee, and where said bill is reported favorably by the committee without amendment, the following form should be used:

Form No. 35.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

....
.....
.....
retaining its place on the order of third reading, reported in favor of the passage of the same without amendment,

Which report was agreed to and said bill ordered restored to its place on the order of third reading.

Report of a Bill, Advanced to Third Reading before Reference, and Reported Favorably with Amendments.

Form No. 36.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred Assembly bill, introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of third reading, reported in favor of the passage of the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

....., Chairman.

Which report was agreed to and said bill ordered reprinted and restored to its place on the order of third reading.

Report of a Bill with Amendments, to be Reprinted and Recommitted.

Form No. 37.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

.....,
Chairman.

and requests that said bill be reprinted, as amended, and recommitted to said committee,

Which report was agreed to and said bill ordered reprinted, as amended, and recommitted to said committee.

RECOMMITTED BILL.

Report of a Bill, Recommitted without Having Been Advanced to Second Reading, Favorable, without Amendment.

Where a bill has been reported from a committee with amendments to be reprinted and recommitted, after it has been so reprinted and recommitted, is then ordered reported favorably without amendments, the following form should be used:

Form No. 38.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill. introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported in favor of the passage of the same without amendment,

Which report was agreed to and said bill placed on the order of second reading.

Report of a Bill, Recommitted, without Having Been Advanced to Second Reading, Favorable, with Amendments.

Where a bill has been reported from a committee with amendments to be reprinted and recommitted and after having been so reprinted and recommitted, is reported favorably with amendments, the following form should be used:

Form No. 39.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

....., Chairman.

Which report was agreed to and said bill ordered reprinted, as amended, and placed on the order of second reading.

Report of a Bill, Recommitted, without Having Been Advanced, and Reported with Amendments, to be Reprinted and Recommitted.

Form No. 40.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

reported the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

and requests that said bill be reprinted, as amended, and recommitted to said committee,

Which report was agreed to and said bill ordered reprinted, as amended, and recommitted to said committee.

RECOMMITTED BILL.

Report of a Bill, Recommitted on Second Reading and Reported Favorably, without Amendments.

After a bill has been reported from a committee and placed on the second reading calendar it may be recommitted to a committee for a hearing or for further consideration. When such bill is ordered reported favorably without amendment, the following form should be used:

Form No. 41.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of second reading, reported in favor of the passage of the same without amendment.

Which report was agreed to and said bill ordered restored to its place on the order of second reading.

Report of a Bill, Recommitted on Second Reading and Reported Favorably, with Amendments.

Form No. 42.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of second reading, reported in favor of the passage of the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

....., Chairman.

Which report was agreed to and said bill ordered reprinted, as amended, and restored to its place on the order of second reading.

Report of a Bill, Recommitted on Third Reading and Reported Favorably, without Amendment.

It often happens that a hearing or further consideration of a bill is desired after the same has been advanced to the order of third reading, or while it is under consideration on the third reading calendar, and it is, therefore, recommitted to a committee for such purpose. When a committee orders such a bill reported favorably without amendment, the following form should be used:

Form No. 43.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of third reading, reported in favor of the passage of the same without amendment,

Which report was agreed to and said bill ordered restored to its place on the order of third reading.

Report of a Bill, Recommitted on Third Reading and Reported Favorably, with Amendments.

Where a bill has been recommitted to a committed on the order of third reading, is reported by such committee favorably, with amendments, the following form should be used:

Form No. 44.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of third reading, reported in favor of the passage of the same, with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

.....,
Chairman.

Which report was agreed to and said bill ordered reprinted, as amended, and restored to its place on the order of third reading.

Report of a Bill, Recommitted on Second or Third Reading and Reported with Amendments, to be Reprinted and Recommitted.

It may occur that a bill which has been recommitted to a committee on the order of either second or third reading, is ordered reported by the committee with amendments, to be reprinted and again recommitted to the committee, in which case the following form should be used:

Form No. 45.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was recommitted the bill introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....

retaining its place on the order of ..... reading, reported the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....

.....,
Chairman.

and requests that said bill be reprinted, as amended, and recommitted to said committee,

Which report was agreed to and said bill ordered reprinted, as amended, and recommitted to said committee.

RECOMMITTED BILL.

Report of a Substitute for a Bill which has Not Been Advanced.

Whenever a bill which has been introduced, printed and referred to a committee is so materially amended as to render it inexpedient to attempt to change the language of the original bill so as to make it conform to that desired, the committee may determine to report a substitute bill, which shall take the place of and be substituted for the original bill. When so reported the substitute bill takes the number and the place of the original bill in every respect. Substitute bills must be reported in duplicate, one copy to be permanently affixed to the report and the other to be pinned to the report with the original bill for which it is substituted. The following form should be used:

Form No. 46.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill, introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....

.....

.....

reported in favor of the passage of the following substitute bill:

(Here insert the substitute bill, written out in full.)
.....
.....
.....

Which report was agreed to and said substitute bill ordered printed and placed on the order of second reading.

SUBSTITUTE BILL.

Report of a Substitute for a Bill which Has Been Advanced or Recommitted, Prior to such Report.

It may be desired to report a substitute for a bill which has been advenced to third reading before reference, or for a bill which has been recommitted before advancement or after having been advanced to second or third reading. In such case the following form should be used, with the necessary changes. In case the bill has been recommitted, the word "referred" should be stricken out and the word "recommitted" substituted therefor.

Form No. 47.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill, introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)
.....
.....
.....

retaining its place on the order of ..... reading, reported in favor of the passage of the following substitute bill:

(Here insert the substitute bill, written out in full.)
.....
.....
.....
Which report was agreed to and said substitute bill ordered printed and restored to its place on the order of ..... reading.

SUBSTITUTE BILL.

Report of a Resolution.

Concurrent resolutions, proposing amendments to the Constitution should be reported in all respects as a bill, except that the word "bill" should be stricken out and the words "concurrent resolution" inserted in place thereof. The report of any other resolution of the House, should not contain a statement of the amendments made by the committee but should contain the resolution in its final form without reference to the resolution in the form referred to the committee, other than a statement of the subject thereof. The following is the form of a report on a resolution of the House.

Form No. 50.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the resolution relative to
(Here insert a brief description.)
.....
.....
.....
reported in favor of the adoption of the following resolution:

(Here insert resolution.)

.....

.....

.....

Which report was agreed to.

Adverse Report.

A committee may decide to report a bill adversely for the purpose of defeating it without attempting to amend it, in which case the following form should be used:

Form No. 51.

FOR ASSEMBLY BILLS.

Mr. ....., from the Committee on ....., to which was referred the bill, introduced by Mr. ..... (No. .....) (Int. No. .....), entitled,

(Here insert title.)

.....

.....

.....

reported adversely thereto,

Which report was agreed to and said bill rejected.

Senate Bills.

The forms used for the report of Senate bills and the rules governing the report of such bills are identical with the forms and rules governing the report of Assembly bills, except that the reception number is used in place of the introductory number and a different colored blank is used in each case, so that the Journal Clerk and the Index Clerk can distinguish at a glance the reports of Assembly bills from those of Senate bills. Blanks intended for reports of Assembly bills should

never be used in reporting Senate bills and the same care should be exercised in using the proper blanks for each Senate bill reported.

Where Senate bills are amended the statement of amendments should always refer to the numbered pages and lines of the last printed copy of the Senate bill and the amendments should be written out upon such printed copy of the bill and never upon the engrossed copy in the jacket. When a Senate bill is amended it becomes subject to the rules of the Assembly, relating to the printing of the bill, and for such purpose is treated as an Assembly bill, and the rule as to underscoring new matter and enclosing old matter in brackets of an amendatory act, must be adhered to. The different forms used for the report of Senate bills will not be given in full, but a reference will be made to their numbers. The forms correspond so closely with those used in reporting Assembly bills, that further illustrations are unnecessary.

Report of a Senate Bill, Favorable, without Amendment.

Form No. 52.

FOR SENATE BILLS.

Mr. ....., from the Committee on ....., to which was referred the Senate bill introduced by Mr. ..... (No. .....) (Rec. No. .....), entitled,

(Here insert title.)

.....

.....

.....

reported in favor of the passage of the same, without amendment.

(Here insert title.)

.....

.....

Which report was agreed to and said bill placed on the order of second reading.

Report of a Senate Bill, Favorable, with Amendments.

Form No. 53.

FOR SENATE BILLS.

Mr. ....., from the Committee on ....., to which was referred the Senate bill, introduced by Mr. ..... (No. .....), (Rec. No. .....), entitled,

(Here insert title.)

.....

.....

.....

reported in favor of the passage of the same with the following amendments:

(Here insert amendments written out in full.)

.....

.....

.....

....., Chairman.

Which report was agreed to and said bill ordered reprinted, as amended, and placed on the order of second reading.

Report of a Senate Bill Advanced to Third Reading before Reference, and Reported Favorably without Amendment.

Form No. 54.

FOR SENATE BILLS.

Report of a Bill Advanced to Third Reading before Reference, and Reported Favorably with Amendments.

Form No. 56.

FOR SENATE BILLS.

Report of a Senate Bill with Amendments, to be Reprinted and Recommitted.

Form No. 57.

FOR SENATE BILLS.

Report of a Senate Bill, Recommitted, without Having Been Advanced to Second Reading, Favorable, without Amendment.

Form No. 58.

FOR SENATE BILLS.

Report of a Senate Bill, Recommitted without Having Been Advanced to Second Reading, Favorable, with Amendments.

Form No. 59.

FOR SENATE BILLS.

Report of a Senate Bill, Recommitted, without Having Been Advanced, and Reported with Amendments to be Reprinted and Recommitted.

Form No. 60.

FOR SENATE BILLS.

Report of a Senate Bill Recommitted on Second Reading, and Reported Favorably without Amendment.

Form No. 61.
FOR SENATE BILLS.

Report of a Senate Bill, Recommitted on Second Reading and Reported Favorably with Amendments.

Form No. 62.
FOR SENATE BILLS.

Report of a Senate Bill, Recommitted on Third Reading and Reported Favorably, without Amendment.

Form No. 63.
FOR SENATE BILLS.

Report of a Senate Bill, Recommitted on Third Reading and Reported Favorably, with Amendments.

Form No. 64.
FOR SENATE BILLS.

Report of a Senate Bill, Recommitted on Second or Third Reading, and Reported with Amendments to be Reprinted and Recommitted.

Form No. 65.
FOR SENATE BILLS.

Report of a Substitute for a Senate Bill which Has Not Been Advanced.

Form No. 66.
FOR SENATE BILLS.

Report of a Substitute for a Senate Bill which Has Been Advanced or Recommitted Prior to such Report.

Form No. 67.

FOR SENATE BILLS.

Adverse Report of a Senate Bill.

Form No. 68.

FOR SENATE BILLS.

Report of a Senate Bill for the Consideration of the House.

Use the form otherwise required, striking out the words "in favor of the passage of the same," and insert in place thereof the words "for the consideration of the House."

Report of Senate Resolutions.

A Senate concurrent resolution proposing an amendment to the Constitution is reported in the same form as a Senate bill except that the word "bill" is stricken out and the words "concurrent resolution" inserted in place thereof. Other concurrent resolutions of the Senate are treated in a different manner than resolutions of the House.

In reporting a resolution of the House, if amended, the amendments are not stated in the report, but the report contains the resolution in its final amended form only. In reporting a resolution of the Senate the amendments should be inserted in the original resolution and stated in the report in practically the same form as in reporting a bill, and the following forms should be used:

Report of a Senate Concurrent Resolution, Favorable, without Amendment.

Form No. 69.

FOR SENATE RESOLUTIONS.

Mr. ....., from the Committee on ....., to which was referred a Senate concurrent resolution, relative to

(Here insert a brief description.)

.....
.....
.....

reported in favor of the adoption of the same without amendment,

Which report was agreed to.

Report of a Senate Concurrent Resolution, Favorable, with Amendment.

Form No. —.

FOR SENATE RESOLUTIONS.

Mr. ....., from the Committee on ....., to which was referred the Senate concurrent resolution relative to

(Here insert a brief description.)

.....
.....
.....

reported in favor of the adoption of the same with the following amendments:

(Here insert amendments, written out in full.)

.....
.....
.....
.....,

Which report was agreed to. Chairman.

Report of a Committee by Bill.

A committee may report by bill, and such action is deemed equivalent to the introduction of said bill and

report thereof by the committee, and it takes the name of the committee by whom introduced as its introducer. Such report may be made as the result of a reference to said committee of a message from the Governor or communication of a state officer, board or body, or the petition or memorial of other persons; or the committee may take such action upon its own initiative.

Report of a Committee by Bill.

Mr. ....., from the Committee on ....., reports by bill, entitled

(Here insert title.)

.....
.....
.....

Report of a Committee by Bill Pursuant to a Message or Communication.

Mr. ....., from the Committee on ..... to which was referred the (message of the Governor relative to .....)

.....
.....
.....

reports by bill entitled,

(Here insert title.)

.....
.....
.....

Report of a Bill or Resolution for the Consideration of the House.

It often happens that a committee is not willing to recommend the passage of a bill yet desires to have the bill considered by the House. This action may be taken upon any bill which is in its possession. For such re-

port use the proper form for a favorable report, striking out the words "in favor of the passage of the same" and inserting in place thereof the words "for the consideration of the House."

Members of a Committee Dissenting from Report.

It often happens that on certain measures, certain members of a committee may desire that it appear upon the Journal record that they did not agree to the report of a bill but dissented therefrom. This they have the right to do and to have such fact noted in the report. In such case there should be interlined at the end of the first sentence, in the last part of the report and before the words "which report was agreed to" the words "Mr. ..... or Messrs ..... (as the case may be) dissented therefrom."

Committee of Conference.

In every case of difference between the two houses, upon any subject of legislation, either house may request a conference, and appoint a committee for that purpose, and the other shall also appoint a committee to confer. The committee shall meet at such hour and place as shall be appointed by the chairman of the committee on the part of the house requesting such conference. The committee shall report in writing, and shall be authorized to report such modifications or amendments as they think advisable. But no committee on conference shall consider or report on any matter except those directly at issue between the two houses. The papers shall be left with the conferees of the house assenting to such conference, and they shall present the report of the committee to their house. When such house shall have acted thereon, it shall transmit the same, and the papers relating thereto, to the other, with a message certifying its action thereon. Every report of a committee of conference shall be read through, in each house, before a vote is taken on the same.—Joint rule 2.

It shall be in order for either house to recede from any subject matter of difference existing between the two houses at any time previous to conference, whether the papers on which such difference arose are before the house receding, formally or informally; and on such vote to recede the same number shall be required to constitute a quorum to act thereon, and to assent to such receding, as was required on the original question out of which the difference arose.— Joint rule 3.

In case of a failure of the conferees to agree, a report of such disagreement may be made and a further conference may be had, either by the same or new committees appointed for such purpose. After each house shall have refused conference and shall have adhered to their disagreement, the bill which is the subject of difference shall be deemed lost, and shall not be again revived during the same session in either house.— Joint rule 4.

All joint committees of the two houses, and all committees of conference, shall consist of three Senators and five members of the Assembly, unless otherwise specially ordered by concurrent resolution, and in voting, all questions shall be determined by the vote of the committee of each house taken separately.— Joint rule 5.

Whenever a bill which originated in one House has been amended by the other House and the House in which said bill originated, does not concur in such amendment, the amendments are non-concurred in and a request is made for a committee of conference. For illustration:

Suppose that an Assembly bill has passed the Assembly and amendments are made in the Senate to which the Assembly will not accede. When the bill is returned to the Assembly from the Senate the introducer moves that the Assembly non-concur in the amendments and requests the appointment of a committee of conference. The Senate accedes to this request and the president of the Senate names three senators members of said committee. The bill then returns to the Assembly

and the Speaker names five members of said committee. The committee then meets and considers the matters in difference. The clerk of the committee to which the bill was originally referred usually acts as the clerk of the committee of conference. It is his duty to notify the members of the committee of the time and place of meeting, to attend the same and prepare the report. Three copies of the report must be prepared and the copy of the bill as agreed to by the committee with all amendments inserted must be returned with the report as well as the jacketed bill. The original report must be signed personally by a majority of the committee, the other two copies need not be personally signed, but the committee clerk must copy the signatures thereon. The original report is placed in the jacket and goes to the Governor, if the bill finally passes. One of the duplicates of the report is for the Assembly Journal and the other for the Senate Journal. The form of the report must conform to the action taken by the conference committee, and the expressions usually used therein are as follows:

"That the Senate (or Assembly) recedes from its amendments."

"That the Senate (or Assembly) amendments be concurred in."

"That the Senate (or Assembly) recedes from the following amendments, viz. (writing out amendments in full), and that the Assembly (or Senate) concur in the balance of said amendments."

"That the Senate (or Assembly) recedes from its amendments and that said bill be amended as follows: (Here write out amendments in full.)

Any new amendments made by a committee of conference, must relate solely to the matters in controversy.

The report of a committee of conference is made to the House in which the bill originated, and the following form should be used, and made to conform to the action of the committee as hereinbefore suggested:

Form No. —.

Mr. ....., from the Committee of Conference, presented the following report:

To the Legislature:

The undersigned, appointed by the Senate and Assembly as a Committee of Conference relative to the matters of difference arising between the two Houses, upon the ..... bill (No. .....) (Rec. or Int. No. .....), entitled,

(Here insert title.)

.....
.....
.....
.....

report that they have duly conferred upon said matters and agree to recommend as follows:

.....
.....
.....

.....,
.....,
.....,
.....,
.....,

Committee on the part of the Senate.

.....,
.....,
.....,
.....,
.....,
.....,
.....,
.....,

Committee on the Part of the Assembly.

Committees on Revision, Engrossed Bills and Rules.

The clerks in charge of these committees are necessarily experienced in the work required and no special directions for their guidance need be given. A full set of blanks for the reports of these committees are provided.

Duties at Close of Session.

It is the duty of every committee clerk, at the close of the session of the Legislature, to complete and post up his record book, making a full report of the work of his committee for the session upon a form provided for such purpose and deliver such report, together with all original bills not reported from the committee and remaining in his possession, to the Index Clerk. He should have in his possession the original of every bill not reported from the committee, and his record book and report must account for every bill and resolution which has been referred to his committee. This work should not be neglected, as it is necessary in order to enable the Index Clerk to check up his records at the close of the session. The final report must be submitted prior to the day of final adjournment.

Legislative Procedure.

As every new member will have the responsibility of legislation for his locality, a brief statement of the manner of introducing, progressing and passing a bill will be found convenient.

Introduction of Bills in the Senate.

In the Senate, under the order of "introduction of bills," the districts are called numerically, and each senator desiring to introduce a bill, as the number of his district is called, rises in his place and addressing the President of the Senate, sends the bill to the clerk's desk, where it receives its first reading and also its second reading by its title, unless the same is objected to, in which case the bill is read through and then referred to the proper committee. Each bill must be prepared and sent to the clerk's desk in duplicate.

Preparation of Bills in the Assembly.

Much depends upon the care with which a bill is prepared.

If it is not clear in language or is faulty in form or construction it will necessarily have to be amended and reprinted and its passage thus delayed. There are some general rules, which if followed will obviate the most common errors.

1. The bill should be typewritten and have endorsed upon the outer sheet or cover the title of the bill with the name of the introducer.

2. Each bill must be prepared in duplicate, one copy is transmitted to the printer and the other filed with the librarian of the Assembly for reference.

3. The title should be concise, and if the bill is a private or local bill it must embrace but one subject, and that must be expressed in the title. (Art. 3, § 16, Const.)

4. No act shall be passed which shall provide that any existing law or any part thereof shall be made or deemed a part of said act or which shall enact that any existing law or part thereof shall be applicable except by inserting it in such act. (Art. 3, § 17, Const.)

5. Every bill must have an enacting clause which follows the title and must be in the following form "The People of the State of New York, represented in Senate and Assembly, do enact as follows:" (Art. 3, § 14, Const.)

6. Every section should be numbered, commencing at one. In the first section the word "section" should be written out and in each succeeding section the character should be used.

7. No figures should be used in a bill except for the numbers of the sections. No abbreviations should be used.

8. Private or local bills shall not be introduced except upon a memorial or petition presented to the House and verified by the party or parties praying for the passage of the same except by order of the House. (Assembly rule 8.)

9. The title and first section of every bill should be drawn in strict compliance with the provisions of Assembly rule 9.

10. Every bill amending existing law must in the body of the bill have all new matter printed underscored and all matter to be eliminated by amendment from existing law must be printed in its proper place in the bill inclosed in brackets. (Assembly rule 9.)

11. The following is an illustration of the general form to be followed in drafting bills to be modified according to the character of the bill or subject matter, as indicated in rule 9.

AN ACT to amend the legislative law relative to slips of general laws to be forwarded to clerks.

The People of the State of New York, represented in Senate and Assembly, do enact as follows:

Section 1. Section forty-nine of chapter two hundred and eighty-two of the laws of eighteen hundred and ninety-two as amended by chapter one hundred and thirty-two of the laws of eighteen hundred and ninety-three and chapter one hundred and thirty-eight of the laws of eighteen hundred and ninety-four and chapter two hundred and fifty-nine of the laws of eighteen hundred and ninety-six is hereby further amended so as to read as follows:

§ 49. (Here insert section forty-nine as it is desired to amend the same, underscoring new matter and enclosing matter to be eliminated in brackets.)

How to Introduce a Bill.

There are two methods of introducing a bill in the Assembly by a member as follows:

1. The member rises in his seat and being recognized by the Speaker, asks unanimous consent to introduce a bill. If no objection is made, the bill is sent to the desk and its title is read. If the member is desirous of progressing the bill he then asks unanimous consent "that

the bill may now have its second reading." This requires a roll-call to ascertain if unanimous consent be given, and if the roll-call shows no objection the bill is read by sections and ordered to a third reading. One objection prevents the introduction of a bill in this manner and likewise one objection will prevent its advancement to a third reading.

2. The second and most ordinary method of introducing a bill by a member is by means of the bill-box. This box is located on the right of the Clerk's desk and all that is necessary to be done is to have duplicate copies of a bill prepared and deposit them in the bill-box. The bills so introduced are usually announced the following morning and have their first reading and reference to the proper committee.

All bills that involve any appropriation from the treasury of the State, when introduced in the Senate, must be referred to the Committee on Finance, and when introduced in the Assembly, must be referred to Committee on Ways and Means.

No bill can be introduced otherwise than as above stated, except by report of a committee, by order of the body itself, or by message from the co-ordinate branch.

The rules of the two Houses regulating the introduction of bills are these:

"Every bill shall be introduced by a Senator in his place, or on the report of a committee, or by message from the Assembly, and after its first and second reading, unless otherwise ordered by the Senate, shall be referred to a standing or select committee to consider and report thereon.

No private bill shall be introduced by a Senator or on the report of a committee, unless accompanied by a memorial or petition signed and verified by the party or parties praying for the passage of the same, except by order of the Senate.

"Every bill introduced by a Senator shall be in duplicate and shall have indorsed thereon a statement of its title, with his name."— Senate rule 16.

"No bill shall be amended or committed until it shall have been twice read."— Senate rule 18.

"Bills may be deposited, at any time during the session, in a box to be known as the 'bill box,' which shall be under the immediate charge of the Clerk, and which shall be kept securely locked until all bills so deposited are removed by him, or by a deputy clerk authorized by him. Every bill shall be in duplicate, and both shall be indorsed with a statement of the title, accompanied by the name of the member introducing it.

"At the close of each day's session one of each of such bills so deposited shall be handed by the Clerk to the Speaker for his examination, after due record thereof has been entered in a book which shall be kept for that purpose. At the next regular session, as provided for in subdivision 2 of rule 5, the Speaker shall announce the introduction of all bills thus received by him, for their first reading, and thereupon shall refer them to the appropriate committees, with the consent of the House.

"The other of each of such bills, having first been entered in the record book, shall on the day of their reception be filed by the Clerk with the librarian of the Assembly, who shall keep a record thereof, which, together with the bills, shall, under his supervision, be subject to public inspection during the regular office hours of the library."— Assembly rule 6.

"Every bill, immediately upon its introduction, shall be printed and placed on the files of the members. It shall retain its original printed number, when reprinted, together with its new number thereafter, during all stages of its progress."— Assembly rule 7.

"All bills, whether introduced in the House or communicated by message from the Senate, shall, after their first reading, be referred to a standing or select committee to consider and report thereon."— Assembly rule 11.

"No private bill shall be introduced but upon a memorial or petition, presented to the House and signed by the party or parties praying for the passage of the same, except by order of the House."— Assembly rule 8.

Bills can be introduced under any other order of business by unanimous consent only; a single objection is then fatal, but if no objection is made, the bill is received, read and referred as above. No other disposition can be made with bills on introduction without unanimous consent.

Looking After a Bill After its Introduction.

Something more than the mere introduction of a bill is necessary on the part of the member. As soon as it is printed it will be placed on the files of the committee to which it was referred and the introducer should then appear before the committee and ask that the same be reported. If it is a bill to which there is no opposition it will usually be reported without trouble, but if there is opposition the opponents may apply for a hearing on the bill. In that case the introducer should appear before the committee on the day of the hearing and introduce to the chairman of the committee such persons as appear for and against the measure. The chairman of the committee will cause printed notices to be sent to any person suggested to him to be interested

in the bill, of the time and place of the hearing. It often happens that between the time of the introduction of a bill and its consideration by a committee of the Assembly that it is discovered that certain amendments are necessary. In such a case the introducer should have prepared such amendments and present them to the committee. The amendments should always refer to the page and line of the printed bill. If the committee determines to report the bill either with or without amendments the clerk of the committee prepares the proper report and the same is presented the following day to the House. If the bill is reprinted it will usually mean at least a day's interim for the bill to be reprinted before it appears on the second reading calendar. If not reprinted it always appears on the second reading calendar the day next succeeding its being reported.

Of the Suspension, Alteration or Abrogation of Rules.

By unanimous consent any rule or rules of either House may be suspended, changed or rescinded, subject only to the restraints of the Constitution. If such consent be wanting, the rules quoted elsewhere (under the head of Notices), prescribe the mode in which such suspension, change or abrogation may be effected.

"A rule of the Senate shall not be altered, suspended or rescinded without a vote of a majority of all the Senators elected; and a motion to suspend, alter or rescind

any such rule, or any joint rule of the two Houses, shall not be in order, without the unanimous consent of the Senate, unless one day's previous notice thereof in writing shall be given; specifying the purpose of the proposed suspension, alteration or rescission; provided that nothing in this rule shall limit the provisions of the first and thirty-second rules."— Senate rule 44.

"No standing rule or order of the House shall be changed, suspended or rescinded unless one day's notice shall have been given of the motion therefor; nor shall such change be made unless by a vote of a majority of all the members elected to the Assembly; any such rule or order, however, may be suspended by unanimous consent. But such notice shall not be necessary on the last day of the session. The notice and motion shall, in all cases, state specifically the object of the suspension, and every case of suspension of a rule under such notice and motion shall be held to apply only to the object specified therein. Such notice shall be given and such motion made under the order of business in which the matter proposed to be advanced by the suspension shall stand."— Assembly rule 54.

Should it be desirable, from any cause, to hasten the passage of a bill, it may be done, subject to the provision of section 15 of article III of the Constitution, with the unanimous consent of the House, or by a suspension of the rules for that purpose.

At least one day's previous notice must be given of the motion to do either, by the rules of both Houses.

The object of suspending a rule must, by the rules of both Houses, be specified in the notice and, that object being attained or attempted, nothing else can be done under such suspension.

If unanimous consent cannot be obtained the following steps may be taken:

1. Give one day's notice of the intention to move to suspend the rule or rules which conflict with the object in view. The following form of notice is applicable to this case:

Mr. Smith gives notice that he will, at some future day, move to suspend the (insert the numbers of the rules) rule in order that the bill entitled "An act," etc., (insert the title), may be considered out of its order.

On any subsequent day, a motion may be made either under the order of business in which the matter proposed to be advanced stands, or under the order of "Motions and Resolutions," to suspend the rules and refer the matter as desired. For this purpose the following form is applicable:

Pursuant to previous notice,

Mr. Smith moves that the rules numbers (—) be suspended, in order that the bill entitled "An act," etc. (recite the title), may be considered out of its order.

This motion requires for its adoption the votes of a majority of all the members elected. If it is carried, it must be followed by another motion, which is put in the following manner:

Mr. Smith moves that the bill entitled "An act," etc., be now considered out of its order.

When it is desired to have a bill ordered directly to a third reading, without consideration in second reading, the same course must be pursued in regard to the notice. The following is the proper form, in a case where it is desired to order a bill which is on order of second reading, to a third reading:

Mr. Smith gives notice that he will, at some future day, move to suspend the (insert number) rule, in order that the bill entitled "An act," etc. (give the title), may be ordered to a third reading without being considered on second reading.

On a subsequent day, the motions may be made to suspend the rule, and order the bill to a third reading in the manner previously described.

In the Senate if it is desired to have a bill taken up in Committee of the Whole, it is necessary to so move when the bill is reached on the calendar in that order of business.

The motion to take up a bill out of its order, after the rule has been suspended for that purpose, requires only a majority of those voting.

Any bill or resolution may be taken up and acted upon out of its order, to any required extent, without previous notice, by the unanimous consent of the House being obtained therefor, except as provided by article III, section 15, of the Constitution.

Of the Three Readings of a Bill in the Assembly.

The Constitution of the State and the rules of the Assembly require that a bill shall have three separate readings.

These readings occur as follows:

First Reading.

The first reading of a bill is the announcement of the bill by the Desk, when its title is read and it referred by the Speaker to the proper Committee. On this reading usually only the title is read, although a member may require it to be read through.

Second Reading.

Excepting in the case of a bill advanced by unanimous consent to a third reading, all bills, after being reported by a Committee of the House, are placed on the "second reading calendar."

When a bill is reached in its order on the second reading calendar it is announced by its number, the name of its introducer and the reading of its title in full. If there are no amendments to the title it is read by sections, and if no amendments are offered the introducer moves that the bill be placed on the order of a third reading, which is done. If the introducer, or any member, desires to amend the bill, he sends his amendment, properly written out, to the desk, where it is read and action taken on the same.

Progress of a Bill Between Second and Third Reading.

When an Assembly bill has been read a second time and ordered to a third reading it does not go immediately on the third reading calendar, although it has passed second reading. It has several steps to go through before it can be read a third time, and these steps may be summarized as follows:

1. If the bill is amended it must first be reprinted, and then it is referred to the Committee on Revision. This Committee has its rooms in the Assembly Library, and the revision is done by clerks who are experts in their work. Its purpose is to free the bills from ungrammatical language, correct typographical errors and make the bill read so as to ac-

complish the exact purpose of its introducer. This Committee, unlike every other Committee of the House, reports "recommendations" only.

2. After a bill has been reported by the Committee on Revision, if it is required to be reprinted, it goes to the printer and is immediately reprinted.

3. After its report by the Committee on Revision, whether reprinted or not, it then goes to another Committee known as the Committee on Engrossed Bills. The work of this Committee is to cause the bill to be "engrossed," *i. e.*, put into a yellow paper cover in which form it is ready for final action. The member should bear in mind that every bill must lie on the table three calendar legislative days in its final form, so that if a bill is reprinted at any stage a new period of three days must elapse from each reprint before the bill will appear on the third reading calendar.

4. After a bill has been reported by the Committee on Engrossed Bills, and has been in its final form three calendar legislative days on the desks of the members, it then appears on the third reading calendar and is ready for final action.

Third Reading.

When a bill is ready for its third or final reading it is placed on the calendar in its proper order, and when reached it is announced by the name of its introducer, its number and title. Unless a demand is made therefor the bill is not read through, but the final section is read and the roll is called thereon.

If it is desired to debate the bill it is usual for some member to move to "strike out the enacting clause," which is one of the parliamentary methods of killing a bill. This motion is usually made to obtain an explanation from the member who introduced the bill. The member should be ready at such time with an explanation of the bill and such defense of the same as he deems proper. After the bill has been debated under the rules, it is usual for the mover of the resolution to strike out the enacting clause to withdraw the motion and permit the bill to go to a final vote. However, the motion to strike out is a proper one and if insisted on the vote is first taken on that motion. If carried, the bill is killed, but if defeated and no other motion is made the vote is then taken on the final passage of the bill.

If a bill is laid on the table on its third reading it retains its place in the order of third reading of bills, and if taken from the table by motion, it comes immediately again before the house on its third reading.

If a bill has been read through on its third reading, no delay of any kind is in order; the Constitution provides that the vote in such case, on its final passage, must be taken.—Const., art. 3, sec. 15.

See Senate Journal of 1903, at page 1551.

Bills in readiness for a third reading have precedence among themselves according to seniority, under the rules of both Houses.

"No bill shall be read a third time out of its regular order, unless on a vote of two-thirds of all the Senators present and voting."—Senate rule 18.

"Every bill shall receive three separate readings, and on three different days, previous to its passage, except by unanimous consent, or when made a special order."— Assembly rule 13.

So, also, the final reading of a bill may be arrested on the ground that such reading is in contravention of some one or more of these requirements:

Every bill shall receive three readings previous to its being passed and the President shall give notice at each, whether it be the first, second or third."— Senate rule 18.

"No bill shall be ordered to a third reading without having been acted on in committee of the whole."— Senate rule 18.

Besides these preliminary questions, others not unfrequently arise after a bill has been read the third time and before the final vote, under the following provisions of the Constitution and rules of the two Houses.

"No bill shall be passed or become a law unless it shall have been printed and upon the desks of the members, in its final form, at least three calendar legislative days prior to its final passage, unless the Governor, or the acting Governor, shall have certified to the necessity of its immediate passage, under his hand and the seal of the State; nor shall any bill be passed or become a law, except by the assent of a majority of the members elected to each branch of the Legislature; and upon the last reading of a bill, no amendment thereof shall be allowed, and the question upon its final passage shall be taken immediately thereafter, and the yeas and nays entered on the journal." — Constitution, art. 3, § 15.

"After a bill or resolution to amend the Constitution shall be ordered to a third reading, no motion to amend

the same shall be in order without unanimous consent, ou any such bill or resolution may be recommitted prior to th completion of the final reading thereof."— Senate rule 19.

"When a bill shall be reported by a committee of th whole, and not otherwise disposed of, the question shal be: 'Shall the report be agreed to?' And when the re port of such committee, if favorable, shall be agreed to and the bill not otherwise disposed of, the bill shall b ordered printed or engrossed for a third reading. Upon such question, the merits of the bill may be debated, and a motion to commit or recommit, or to amend, as pro vided in the fourteenth rule, or lay on the table, or to postpone to a future day, shall be in order. If such question be decided in the negative, such bill shall be deemed lost."— Senate rule 17.

Many questions have arisen under the provisions of section 15 of Art. III with reference to the printing of bills, the first arising in 1895 in the Senate (see Senate Journal, 1895, p. 110), the point being raised that the printing of the bill in its final form in the Assembly was not sufficient, but that the bill should also be printed in the Senate. It was held by Lieutenant-Governor Saxton that the printing of a bill by the Assembly in conformity to the Constitution was sufficient, a file of Assembly bills being on the desks of the Senators, and the bills necessarily having been thereon for three days prior to their passage by the Assembly.

The Assembly rule requiring use of brackets and underscoring was held by Speaker Fish (Assembly Journal, 1896, p. 1331) not to apply to bills in order of third reading, but bills if printed with brackets and underscoring are in correct final form.— Speaker O'Grady, Assembly Journal, 1898, p. 58.

The Constitution, under a literal interpretation, would seem to enjoin that there shall be no interval for amendment, recommitment, debate, or even adjournment, between the third reading of a bill and the final vote thereon.

The rules of the Senate, under recent alterations, as cited above, would seem to recognize this literal interpretation.

The Assembly rules formerly allowed a motion to be made to recommit after the bill had had its third reading. This, impliedly, would permit debate on such motion. This was held to be in conflict with the Constitution, and the rule changed.

The intent of the framers of the Constitution was avowedly to secure final action on every bill at the moment most favorable for an intelligent and independent decision on its own inherent merits or demerits, and especially to check the practice formerly in vogue, of reading bills a third time and laying the question of their final passage on the table to be called up at some preconcerted hour and then forced through, from their mutual dependence on each other by dint of their combined momentum—a practice familiarly and appropriately known as "log-rolling."

The practice, however, has become settled that no delay shall take place after the bill has been read through. A motion to adjourn is, under the present practice, then out of order. Nor is the House permitted to adjourn after the reading of the bill is concluded before the vote is taken, although the hour previously fixed for adjournment has arrived.

It sometimes happens that it becomes necessary to amend a bill on the order of third reading. In that case when the bill is reached on the calendar the introducer, instead of moving to amend the bill moves "that said bill be recommitted to the Committee on (the Committee to which the bill was originally referred) with instructions to amend as follows: (Here insert amendment) and report the same forthwith."

This motion being adopted amends the bill accordingly, and as a matter of fact it never goes to the Committee, nor does the Chairman of the Committee make any report thereon. This motion must be made before the final section of the bill has been read. Section 15 of Art. III of the Constitution expressly prohibits any amendment on the third reading of a bill, *i. e.*, after the final section has been read. If, for any reason, the motion to recommit is not made before the final section is read, then the proper practice is, on the completion of the roll-call, to move to "reconsider the vote by which said bill was passed," and after reconsideration make the motion to recommit for amendment.

If a bill be recommitted on its third reading, with instructions to amend and report back forthwith, the final reading is necessarily postponed until such time as is necessary to comply with the provisions of section 3, Art. XV, of the Constitution.

In the Senate, if a bill is recommitted without instructions before being read through, the bill, when reported back, takes its place on the Calendar in the

order of business in which it stood when recommitted. In the Assembly, a bill recommitted generally on the order of third reading is, when reported, restored to its place on that order of reading, and goes on the third reading calendar, and when a motion is made to reconsider a vote on the final passage of a bill and that motion is tabled the bill goes on the Laid Aside third reading calendar.

Bills are frequently read a third time by their titles, or by the numbers of the sections. The decisions of the presiding officers upon this subject appear in the Senate Journal of 1895 at page 610, and the Assembly Journal of 1897, at page 1766 *et seq.* Also Senate Journal of 1903, at page 669.

A bill having been passed or rejected may be thereafter debated or redebated under a motion to reconsider the adverse or favorable vote, or such debate may be adjourned over by laying on the table the motion to reconsider.

If the motion to reconsider be carried the bill may be laid on the table or recommitted; or it may be immediately read again and the question again put on its final passage, as the majority may determine.

But if the motion to reconsider the vote on the final passage of a bill, or the bill itself, after reconsideration, be laid on the table, neither such motion nor such bill can be called up for action except when the third reading of bills is in order.

Motions to reconsider bills that have been passed are sometimes made with a view to the rejection of

such motions, and to the end that such bills may be placed beyond the reach of delay or arrest from hostile quarters.

The Laid Aside Calendar.

When a bill is reached in its order on the calendar and the member desires, for any reason, to delay action on the same, he may move to lay the bill aside. This motion, if adopted, places the bill on what is known as the Laid Aside calendar. After a bill has been so laid aside it can only be called up in the Assembly, except by unanimous consent, by giving at least one day's written notice that the member will on a stated day call up the bill for action. Blank notices for this purpose may be procured at the Clerk's desk. When the House is in the order of reading in which the bill so laid aside is in, the member may call the same up for action.

Proceedings on a Bill After its Passage by the Assembly.

After an Assembly bill has been passed it has to be signed by the Speaker and is then delivered by the Index Clerk of the Assembly to the Senate. In the Senate the bill is handed down by the presiding officer of the Senate and is referred to the proper Committtee. The usual practice is for the member to have the bill looked after by the Senator representing his senatorial district. The proceedings on a bill in the Senate are very similar to those of the

Assembly, the only material difference being that in the Senate the "Committee of the Whole" takes the place of the order of "second reading" as conducted in the Assembly.

Proceedings on an Assembly Bill After its Passage by the Senate.

After an Assembly bill has been passed by the Senate and has been certified to by the presiding officer of the Senate, it is delivered to the Assembly and is delivered by the Index Clerk of the Assembly to the Governor. After its signature by the Governor it is delivered to the Secretary of State and is given a chapter number and becomes one of the laws of the State of New York.

Many members desiring to expedite the transmission of their bills, go to the Senate and endeavor to get the bills from the Senate desk as soon as they have passed that body. This cannot be done. Every bill must be regularly transmitted between the two Houses and be entered upon the index books of the same before it can be delivered to the Governor. The Executive Chamber usually designates certain hours for the reception of bills there and they are only received during those hours.

Recall of a Bill from the Senate.

After a bill has been passed by the Assembly and has been transmitted to the Senate, if it is desired

to recall the same from the Senate for any purpose, it may be done by a concurrent resolution for that purpose, and when returned by the Senate notice of its return is given the member by the Index Clerk.

Recall of a City Bill from a Mayor.

Precedent has been established for the recall of a bill from the Mayor of a city to whom it has been sent for approval or rejection before final action thereon by the city. The practice in such cases is the same as when the bill is recalled from the Governor, excepting that the concurrent resolution of such recall is transmitted to the Mayor to whom the bill has been sent.

Recall of a Bill from the Governor.

It oftentimes occurs that after a bill has been passed by both Houses, and has been delivered to the Governor, that it is desired to recall the same for amendment or other purpose. This can only be done by a concurrent resolution of both Houses. Blanks for this purpose may be had at the Clerk's desk. This motion, under the rules of the Assembly, is privileged, and may be made at any time when the member offering the same can secure recognition. When the bill has been so recalled, and has been returned to the House with a message from the Governor, a notice of its receipt by the House is sent to the member introducing the same. The bill usually remains in the desk subject to be called up by the member.

If the member desires to amend the same he should, before calling it up, give notice to the Index Clerk so that the same may be ready when called for. If it is desired to return the same to the Governor without amendment, it is done by concurrent resolution also.

City Bills.

Article XII, § 2, of the Constitution provides:

After any bill for a special city law, relating to a city, has been passed by both branches of the Legislature, the House in which it originated shall immediately transmit a certified copy thereof to the Mayor of such city, and within fifteen days thereafter the Mayor shall return such bill to the House from which it was sent, or if the session of the Legislature at which such bill was passed has terminated, to the Governor, with the Mayor's certificate thereon, stating whether the city has or has not accepted the same. * * *

Whenever, during the session at which it was passed, any such bill is returned without the acceptance of the city or cities to which it relates, or within such fifteen days is not returned, it may nevertheless again be passed by both branches of the Legislature, and it shall then be subject as are other bills, to the action of the Governor.

When a bill has been returned by the Mayor of a city with the approval of the city, it is delivered by the Clerk to the Governor.

When a bill is returned vetoed, notice to that effect is immediately sent to the member introducing the same by the Index Clerk.

When a bill relates to a city of the first class, which includes New York City and Buffalo, the hearing is only had before the Mayor, and only his action is had thereon. But if the bill relates to a city of the second or third class, then the hearing is had before the Mayor and Common Council, or the legislative body of the city by whatever name it is known.

To secure the approval of a bill in a city of the second or third class both the Mayor and the legislative body must concur. If either fails to give assent then the bill, in order to go to the Governor, must be repassed by the Senate and Assembly. A two-thirds vote in such case is not necessary, as is the case of a veto by the Governor. The same vote that would pass the bill originally is sufficient to repass it in each House. The practice in such cases is for the Speaker to hand down the bill and cause it to be announced. The action of the Mayor and the legislative body of the city is then stated. If the Mayor returns any message with the bill, giving reasons for its rejection, this message is read. Debate on final action in the House has been permitted. When the House is ready for action the Speaker announces "The question is shall this bill pass notwithstanding the objection of the Mayor and Common Council, the legislative body of the city of ..... thereto?"

If the veto is by the Mayor or the legislative body

alone, the announcement is varied to meet the case. The vote is then taken in the same manner as on the final passage of a bill, and if repassed a special message is attached thereto, certified by the Speaker, and the bill transmitted to the Senate for its action thereon, where substantially the same procedure is gone through with.

Calling Papers from the Files.

When it is desirable to renew matters which have been under consideration at a former session, but which have failed to receive affirmative action, or when it is necessary, for any other reasons, to bring the information contained in papers on the files into the possession of the House, or either of its Committees, it may be done by resolution. The following forms are applicable:

In a case where the original matter was introduced in the Assembly:

By Mr. J. Smith.

Resolved, That the papers on file, relative to (here state the subject-matter), be taken therefrom and referred to the Standing (or Select) Committee on —— (or, if Select, consisting of Messrs. ——).

Where the matter originated in the Senate:

By Mr. Brown.

Resolved, That a respectful message be sent to the Honorable the Senate, requesting it to transmit to this House the papers on its files relative to (here state the subject-matter), and that, when received, they be referred to the Standing Committee on ——

(or to the Select Committee, consisting of Messrs. ———, as the case may be).

No paper can be permanently withdrawn from the files of either House.

(Extract from chapter 21, Laws of 1909.)

§ 1022. Manuscripts and Records "on File."—Manuscripts or printed papers of the Legislature usually termed "on file," which shall have been on file more than five years in custody of the Senate and Assembly Clerks, and all public records of the State, not placed in other custody by a specific law, shall be part of the State Library and shall be kept in rooms assigned and suitably arranged for that purpose by the Trustees of the Capitol. The Regents shall cause such papers and records to be so classified and arranged that they can be easily found. No paper or record shall be removed from such files, except on a resolution of the Senate and Assembly withdrawing them for a temporary purpose, and in case of such removal a description of the paper or record and the name of the person removing the same shall be entered in a book provided for that purpose, with the date of its delivery and return.

Forms and Proceedings in Committee of the Whole.

As has been before stated, the Committee of the Whole has been superseded in the Assembly by the order of "second reading of bills;" a calendar of bills on second reading is prepared daily, and all

bills are considered in the order in which they appear thereon; the Senate, however, retains the custom of considering bills in Committee of the Whole, and a calendar of the bills in that order is prepared daily.

As each Senator is liable to be called to the chair, when the Senate goes into Committee of the Whole, it will be useful to those who have not previously occupied that position, nor have had practice as presiding officers, to familiarize themselves with the forms of proceeding on such an occasion. For this purpose, the following forms and instructions are given:

When the Senate has resolved to go into Committee of the Whole on the calendar, the President requests some member, calling him by name, to take the chair.

On taking his place, the Chairman says:

"The Senate is now in Committee of the Whole on the calendar," and the Clerk thereupon announces the first bill appearing thereon. After the Clerk reads the title of such bill the Chairman says: "Is this bill moved?" If the Senator in charge of said bill responds in the affirmative, the Chairman will then say:

"The Clerk will read the bill by sections."

If, however, the Committee so direct, the Chairman says:

"The Clerk will read the bill through."

The Clerk having read the bill through, the Chairman says:

"The Clerk will read the bill by sections."

After the Clerk reads the first section, the Chairman says:

"Are there any amendments to be proposed to the first section?"

If none are proposed, after waiting a proper time, the Chairman says:

"If not, the Clerk will read the second section."

The same process is gone through with until all the sections have been disposed of, when the Chairman announces:

"Amendments generally are now in order."

Under this head amendments not before offered and acted on, can be proposed to any section of the bill. If none are offered, the Chairman says:

"The Clerk will read the title of the bill."

When this is done, the Chairman inquires:

"Are there any amendments to the title?"

None being proposed, the Chairman next asks:

"What is the further pleasure of the Committee?"

Here the Senator in charge of the bill usually moves to rise and report the same to the Senate, and recommend its passage. If, however, it is not the last of the bills on the calendar the motion is that "when" the Committee rise, they report, etc.

The motion is put thus:

"The Senator from the ——— moves that the Committee do now rise and report (or that when this Committee rise, they report) this bill to the Senate and recommend its passage."

"Is the Committee ready for the question?"

"Gentlemen: You who are in favor of this motion will say aye. Those opposed will say no. The motion is carried (or lost, as the case may be)."

If the motion is carried, the Clerk announces the next in like form as before. If it is the last bill, the Chairman then leaves the chair, which is resumed by the President. The Chairman then advances opposite to the President's chair, and makes his report on each bill in succession, in the following manner:

"Mr. President:"

The President responds:

"Mr. Chairman:"

The Chairman proceeds:

"The Committee of the Whole have had under consideration the bills moved upon the calendar, and have directed me as their Chairman to make the following report:"

For the convenience of the Senate a record of the proceedings is kept by the Clerk and blanks furnished to the Chairman, and upon his report of the proceedings in Committee of the Whole the same is read to the Senate by the Clerk and entered on the Journal.

The Chairman, after reporting on all the bills acted upon in the Committee of the Whole, retires to his seat, and the President proceeds to put the question on disposing of the report.

If, during the consideration of the bill in the Committee of the Whole, amendments are proposed, the question on their adoption is put in the ordinary form. The Chairman first states the amendment or directs the Clerk to read it. He then asks:

"Is the Committee ready for the question?"

If no further amendment or debate offer, he proceeds to put the question in the usual manner of putting any question to vote in a public assembly, deciding the question by the response of "Aye" and "No."

The strict parliamentary rule is, that a section cannot be amended after a motion to amend has once been negatived, and the section has been passed without further amendments being proposed; the idea being that the vote of the Committee against amending is equivalent to approving the section as it stands, and that the entertainment of further amendments would be only a waste of time. But the practice has sanctioned a more liberal construction.

It is competent for the Committee, while amendments are in order, to reconsider the vote upon any amendment previously made. When a motion of this character is made, the question is stated thus:

"The Senator from the ——— moves to reconsider the vote upon the adoption of the amendment of Mr. ——— to this section (or the ——— section)."

If any member desires to know what the amendment is, the Chairman states it or directs the Clerk to read it, and then says:

"Is the Committee ready for the question?"

If no one rises to debate, he puts the question.

When the motion to reconsider is carried, and the decision is properly announced, the Chairman says:

"The question now recurs upon the adoption of the amendment. Is the Committee ready, etc."

If, at any time during the consideration of a bill,

in Committee of the Whole, a motion is made to rise and report progress (or if it is the first or second bill, that when the Committee rise they report progress), it is in order and must be decided without debate. If it is the last bill, and the question is decided in the affirmative, the Committee immediately rises, and the Chairman makes his report:

"Mr. President:"

The President responds:

"Mr. Chairman:"

The Chairman proceeds:

"The Committee of the Whole have had under consideration the bill entitled (here recite the title), have made some progress therein, but, not having gone through the same, have directed their Chairman to report that fact to the Senate, and ask leave to sit again."

The Chairman then retires as before, after reporting on the bills referred.

The Clerk makes a note of every amendment made to bills in Committee of the Whole, and the Chairman has no further responsibility in the matter after the bill has been reported to the Senate.

If the bill is not gone through with at the first sitting of the Committee of the Whole, it is replaced on the calendar in its order, and may be considered again when moved by the Senator in charge. Any amendment adopted in Committee of the Whole to a bill which is not gone through falls with the report of progress and the bill when considered again is in the same form as if it had not been considered.

The same rules of order are applicable in Committee of the Whole as in the ordinary proceedings of the Senate, except that the yeas and nays cannot be called.

After a bill has been considered by sections, a motion is in order to strike out the enacting clause. If it prevail, the report of the Chairman is thus:

"Mr. President:"

The President responds:

"Mr. Chairman:"

The Chairman proceeds:

"The Committee of the Whole having had under consideration the bill entitled (here recite the title), have stricken out the enacting clause, and have directed their Chairman to report that fact to the Senate, and to recommend its concurrence therein."

A motion to strike out the enacting clause is not in order until the bill has been gone through, for the obvious reason that the Senate ought first to try to perfect before they destroy the bill. For the same reason, a motion to amend a section takes precedence of a motion to strike out. If, while a motion is pending to strike out the enacting clause, a motion is made to amend a certain part of the bill, the question on the latter motion takes precedence of the former.

If, at any time while the Senate is in Committee of the Whole, the point is raised that there is no quorum present, the Chairman directs the Clerk to ascertain that fact by count. If it appears that there

is not a quorum, the President immediately resumes the chair and the Chairman reports thus:

"Mr. President:"

The President responds:

"Mr. Chairman:"

The Chairman proceeds:

"The Committee of the Whole having had under consideration the bill entitled (here insert the title), and after proceeding some time in the consideration thereof, find that there is no quorum present; that fact I herewith report to the Senate."

The President then directs a call of the roll. If, on such roll call, a quorum be found to be present, the President calls to the Chairman to resume his place, and the business of the Committee is resumed at the point where it left off without a quorum.

If, during the session of the Committee, disturbance arise on the floor, or the Chairman finds it impossible to maintain order, he vacates the chair upon the approach of the President, who takes it for the purpose of enforcing order. When order has been restored, the Chairman resumes his seat, and the business of the Committee proceeds.

A motion that the Committee report progress is in order at any stage of the proceedings in Committee of the Whole, being equivalent to the motion to adjourn in the Senate; but a motion to rise and report the bill to the Senate is not in order till the whole process of consideration in Committee of the Whole has been gone through. If a bill which has been amended in Committee of the Whole, and a report of "progress" made thereon, which is not agreed to and

the bill is ordered to a third reading by the Senate, the amendments fall to the ground, and the bill goes to a third reading in the same shape in which it went to the Committee of the Whole. The report of "progress" does not include any amendments, and it is only on the report that the bill "has been gone through" that the amendments are brought before the Senate. When the question of agreeing with the report on a bill which has been fully considered in Committee of the Whole is before the Senate it is subject to division, so that each amendment may be separately voted on if called for by any member; or any amendment may be excepted for a separate vote, and the vote on all the rest may be taken collectively, if desired.

"When the Senate shall be ready to go into committee of the whole, he shall name a chairman to preside therein." — Subdivision 1 of Senate rule 2.

The rules regulating proceedings in the Committee of the Whole of the Senate are these:

"The rules of the Senate shall be observed in committee of the whole so far as they may be applicable, except limiting the number of times of speaking, and except that the ayes and noes shall not be taken. Such committee may strike out the enacting clause of a bill and report that fact to the Senate, and if the report be agreed to by the Senate, it shall be deemed a rejection of the bill."— Senate rule 13.

"A motion that the committee rise and report progress on any bill shall always be in order, and shall be decided without debate."— Senate rule 15.

"Bills committed to a committee of the whole Senate shall, in committee of the whole, be read through by sections. The reports shall state whether or not said bill has been amended in committee of the whole. After the report the bill shall be subject to debate and amendment before the question to print or engross it is put; but such amendments only shall be in order as were offered and decided in the committee of the whole Senate, except by unanimous consent."— Senate rule 14.

The practice in Committee of the Whole in the Senate, is to read, debate and amend bills by sections, as the Senate rule requires.

The sections of a bill are read *seriatim*, and an opportunity given, after the reading of each, for motions to amend. Thus, the first section being read, and no amendment proposed, it is passed over, and the second is read, and so on to the end, no question being taken on the sections themselves, but only on proposed amendments.

A section having been passed over, it is not admissible to return to it, with a view to amend, until all the sections have been read and passed under review, when amendments may be proposed to any section of the bill.

The title of a bill is reserved, by the practice of the Senate, to be considered after its details have been settled, that the title may be conformed to any essential changes made in its provisions.

The motion to strike out the enacting clause of a bill being equivalent to a motion to strike out every section thereof, is not deemed in order until the friends of the bill have had an opportunity, if they

desire it, to obviate objections, actual or anticipated, by amendment; but when made and carried, the bill is disposed of, so far as that can be done in Committee of the Whole, and the fact of such striking out must be at once reported to the Senate. If the motion be rejected, the bill, of course, remains subject to the order of the Committee.

The motion that the Committee rise and report a bill to the Senate is not in order, until the bill has been gone through with, title and all. Like the motion to strike out the enacting clause, it presents the opportunity for a free discussion of its merits and demerits as a whole. If carried, it likewise disposes of the bill, so far as that can be done in Committee of the Whole, and the Chairman immediately reports it to the Senate. If rejected, there is no alternative but to reconsider, or to rise and report progress.

The motion to rise and report progress, though in order at any stage of the proceeding in Committee of the Whole, is subject to restraint on its repetition. That is, having been made and negatived, some business or question or debate must intervene before it can be renewed. But no debate can take place unless a question is presented for consideration or a motion is made.

If, at any time, a Committee of the Whole is found to be without a quorum, it is virtually dissolved, and that fact must be at once reported to the President.

As the rules of the Senate, so far as they are applicable, are in force in Committee of the Whole, with the exceptions mentioned in the rules themselves,

and as they are fully noticed ante, no further allusion to them is necessary here.

Of Reports of Committees of the Whole, and the Action of the Senate Thereon.

"After the report [of the committee of the whole] the bill shall be subject to debate and amendment before the question to print or engross it is put; but such amendments only shall be in order as were offered and decided in the committee of the whole Senate, except by unanimous consent."— Senate rule 14.

"Such committee [of the whole] may strike out the enacting clause of a bill, and report that fact to the Senate; and, if the report be agreed to by the Senate, it shall be deemed a rejection of the bill."— Senate rule 13.

"When a bill shall be reported by the committee of the whole, and not otherwise disposed of, the question shall be: 'Shall the report be agreed to?' And, when the report of such committee, if favorable, shall be agreed to, and the bill not otherwise disposed of, the bill shall be ordered printed and engrossed for a third reading. Upon such question the merits of the bill may be debated, and a motion to commit or recommit, or to amend as provided in the fourteenth rule, or lay on the table, or to postpone to a future day, shall be in order. If such question be decided in the negative, such bill shall be deemed lost."— Senate rule 17.

A Committee of the Whole cannot originate a bill or resolution. It can only act on the bill or resolution referred to it for consideration.

Reports of the Committees of the Whole are of three descriptions. They either report progress; or they report the bill referred to them, with or without amendment; or that they have struck out the enacting clause or the title.

If they report progress, and ask leave to sit again, the usual form of such a report, the question of granting leave may be superseded by a motion to discharge the Committee of the Whole, and to order the bill to a third reading, or to discharge and commit, or to lay on the table, or to postpone, or to grant leave to sit again and make the bill a special order. If no such motion be made, or, if made and lost, and leave is granted to sit again, the bill takes its place on the General Orders, and does not contain any amendments made in Committee of the Whole, but is in the same form as if it had not been considered. If leave to sit again be refused, the bill having no place in any order of business, or on the table, is beyond reach, and virtually lost, unless revived under a motion to reconsider.

If they report a bill with or without amendment, the question of agreeing arises, as of course, and without motion. But the question may be superseded by motions to lay on the table, to commit or recommit, to postpone or to amend. By the Senate rules, no amendment is in order that was not "offered or decided" in committee of the whole.

When sections or parts of sections have been struck out in committee of the whole, and new matter inserted or nothing, motions to amend the report of the committee, so as to restore the bill to its original shape, have been deemed to be in order, though such precise motions were not "offered" in committee of the whole.

If they report that they have struck out the enacting clause of a bill, the question of agreeing to what they have done may be superseded by motions to lay on the table, to commit, recommit or postpone. Either of these, if carried, removes the bill from the consideration of the House for the time being. If not carried, or not made, and the report of the committee of the whole be agreed to, the bill is lost, by the rules of both Houses. If not agreed to, the enacting clause is virtually restored, and the bill is subject to such order as the House chooses to take.

General Orders of the Day.

General Orders are the bills or other matters committed to a committee of the whole.

These bills or other matters are arranged in the order of their commitment, and have precedence among themselves according to seniority in this respect.

Bills and other matters thus committed to the committee of the whole, though made special orders either after or at the time of such commitment, have their place on the list with the rest, and are only temporarily transferred to the calendar of special

orders. These places they resume respectively if undisposed of on the day assigned for their special consideration, unless again made special orders, after such consideration, by a fresh vote.

Under the Senate rules, the calendar called the General Orders of the day, includes in one what in the Assembly is embraced in two separate registers; but this arrangement leads to no confusion there as to what portion of the calendar constitutes the General Orders proper.

The rules of the Senate regulating the making up of the General Orders are as follows:

"The Clerk shall also furnish each Senator daily with a printed list of the General Orders, which shall be kept on file by the Superintendent of Documents, in the same manner as other documents, and he shall also prepare a daily calendar of all bills, engrossed or printed, for a final reading, and place and keep the same, together with printed copies of such bills, on the desk of each Senator; he shall see that all bills shall be acted upon by the Senate in the order in which they are reported and stand upon the calendar, unless otherwise ordered by two-thirds of the Senate."— Subdivision 2 of Senate rule 4.

"The matters referred to the committee of the whole Senate shall constitute the General Orders, and the business of the General Orders shall be taken up as follows, viz.: When the chairman named by the President has taken the chair, the Clerk shall announce the title of each bill, with the printed number or other matter, as it shall be reached in its order, when it may be taken up on the motion of any Senator without the putting of any question therefor, and be considered immediately, and so on until the calendar is exhausted or a motion is moved that the committee rise. Any bill not so moved shall lose its preference for the day."— Senate rule 11.

The practice in the Senate, when the calendars of the day are announced, in the absence of any motion to take up bills out their order on the list, is this:

The bill or other matter standing first on the list is called by its title. If moved, it is first taken up in committee of the whole. If not moved, the next is called, and on so, until some bill or other matter is reached on which some member desires action.

The bills or other matters not moved retain their places. Those moved and acted on, if finally disposed of in committee of the whole, are erased from the list, or checked as so disposed of. Under the Senate rules bills not disposed of resume and retain their places on the General Orders.

QUORUM.

The presence of a quorum being indispensable to the transaction of business, the chair is not generally taken in either House until the requisite number is in attendance, unless it is apparent that a quorum is not likely to appear within a reasonable time after the stated hour of meeting.

If, after the presiding officer has taken the chair, at the opening of a daily session, or if, at any time during the progress of business, either House is found to be deficient in number, business is either not commenced or is suspended, until a quorum shall appear, voluntarily or compulsory, under the usual process of enforcing attendance.

The Constitution, article 3, section 10, provides that a majority of each House shall constitute a quorum to do business.

Article 3, section 25, virtually provides that three-fifths of all the members elect to either House, shall constitute a quorum to do certain things specified therein.

Article 4, section 9, and article 3, section 20, virtually provide that, to do certain other things, two-thirds of all the members elected to either House shall constitute a quorum.

"Whenever upon a roll-call any Senator who is upon the floor of the Senate chamber refuses to make response when his name is called, it shall be the duty of the presiding officer, either upon his own motion or upon the suggestion of any Senator, to request the Senator so remaining silent to respond to his name, and if such Senator fails to do so, the fact of such request and refusal shall be entered in the Journal, and such Senator shall be counted as present for the purpose of constituting a quorum."— Senate rule 33.

Of Votes Taken in the Absence of a Quorum.

"If on taking the final question on a bill, it shall appear that a constitutional quorum is not present, or if the bill requires a vote of two-thirds of all the senators elected to pass it, and it appears that such number is not present, the bill shall shall retain its place on the calendar and be again taken up in its regular order."— Senate rule 24.

The Assembly rules are without any such special provision; but the practice in all cases where the final question is taken on a bill, and a constitutional quorum is not present, is in conformity with the Senate rule which, as far as it goes, is a re-enactment of the parliamentary rule on the subject.

"When from counting the House, on a division, it appears that there is not a quorum, the matter continues exactly in the state in which it was before the division, and must be resumed at that point on any future day." — Hatsell.

As neither House can do business in the absence of a majority of its members, and as the Constitution requires either the presence or the affirmative vote of a larger number — three-fifths or two-thirds — to decide a certain question, it follows that whenever on a division, the constitutional quorum is not present, the vote taken is a nullity, and must be retaken at some future time, as if it had never been before put to a vote.

Where a question is taken by acclamation or by rising, and a few only, or less than a quorum, vote upon it, the Chair usually announces the apparent or ascertained result, if satisfied that there is a quorum present. But, if the point be raised that the House is deficient, members must be counted. If a quorum be present, the decision of the Chair, if any, previously made, stands without a fresh vote, unless the Clerk's count be challenged, or an appeal be taken from the decision of the Chair. If a quorum be not present, the vote is a nullity, as it is when the fact is ascertained by the call of ayes and noes.

The mode in which the attendance f absent members is procured or enforced is noticed elsewhere in this volume.

A quorum is presumed to be present, if no member raises the question. The method of securing a quorum is fully set forth under the heading "Call of the House."

Of the Journal.

"Each House shall keep a journal of its proceedings and publish the same, except such parts as may require secrecy."— Constitution, art. 3, § 11.

Under this injunction of the Constitution minutes are kept by the Clerks of both Houses of all that transpires in either whilst the President or Speaker occupies the chair, the Clerk of the Assembly in a single and continuous record, the Clerk of the Senate in two separate records, under the following rule:

"The proceedings of the Senate upon executive business shall be kept in a journal separate from its proceedings on legislative business."— Senate rule 39.

By the Constitution and the rules of the two Houses, certain things must have a place on the journal:

"The question upon its final passage [of every bill] shall be taken immediately thereafter, and the yeas and nays entered on the journal."— Constitution, art. 3, § 15.

"Every bill which shall have passed the Senate and Assembly, shall, before it becomes a law, be presented to the Governor. If he approve he shall sign it; but, if not, he shall return it with his objections to the House in which it shall have originated, which shall enter the objections at large on their journal, and shall proceed to reconsider it," etc., etc., "but in all such cases the votes of both Houses shall be determined by yeas and nays, and the names of the members voting for and against the bill shall be entered on the journal of each House respectively."— Constitution, art. 4, § 9.

"On the final passage of such bill [contracting debt by or on behalf of the State] in either House of the Legislature, the question shall be taken by ayes and noes, to be duly entered on the journals thereof."—Constitution, art. 7, § 12.

"On the final passage in either House of the Legislature of every act, which imposes, continues or revives a tax," etc., etc., "the question shall be taken by ayes and noes, which shall be duly entered on the journal, and three-fifths of all the members elected to either House shall, in such cases, be necessary to constitute a quorum therein."—Constitution, art. 3, § 25.

"On a division of the Senate, the names of those who voted for or against a question, shall be entered alphabetically on the journal if any Senator require it."—Senate rule 37.

"He shall present to the Governor and enter upon the journals such bills as shall have originated in the Senate and been passed by both Houses. He shall, subject to the rules of the Senate, transmit to the Assembly all bills or concurrent resolutions which have passed the Senate."—Subdivision 3 of Senate rule 4.

"The question on the final passage of every bill shall be taken by ayes and noes, which shall be entered on the journal, and unless the bill receive the number of votes required by the Constitution to pass it, it shall be declared lost, except in cases provided for by the twenty-fifth rule, and such question shall be taken immediately after the third reading and without debate."—Senate rule 21.

"In all cases where a bill, order, motion or resolution shall be entered on the journal, the name of the member introducing or moving the same shall also be entered on the journal."—Assembly rule 47.

"The yeas and nays may be taken on any question, whenever so required by any ten members (unless a division by yeas and nays be already pending), and when so taken, shall be entered on the journal."— Assembly rule 48.

"All questions of order, as they shall occur, with the decisions thereon, shall be entered in the journal, and at the close of the session, a statement of all such questions and decisions shall be printed at the close of and as an appendix to the journal."— Assembly rule 50.

Under these requirements, coupled with usage and precedent, the making up of the journal is left to the discretion of the Clerk, on consultation with the presiding officer, or under his direction, in doubtful cases, subject always to correction by the House.

But there are matters that do not necessarily form part of the journal.

Proceedings in committee of the whole, from the time the President leaves, until he resumes the chair, are never entered on the journal. The report of the chairman, which includes only results, is all that is recorded. Nor can they or any part thereof find a place there except under the fifteenth rule of the Senate, which permits amendments offered in committee of the whole to be renewed in the House.

Propositions made and withdrawn, or not entertained, or ruled out of order by the Chair, and not pressed by the mover under an appeal, or in some other form, unless essential to a proper understanding of other parts of the record, are generally omitted in making up the journal.

Bills are not entered on the journal, but by their titles only, or such parts thereof as may be affected by proposed amendments.

This remark applies also to the details of proceedings with closed doors, under a call of the House, where the call is suspended before anything has been done requiring a resort to the police power of the House, or to some form of discipline in open or closed session. But in other cases, the record being essential to the protection of the officers of the House, or to the justification of the House itself, or, on the other hand, to the vindication of the rights of members, if unjustly assailed, it should form part of the journal.

Both Houses have made provision for the publication of the journal.

"It shall be the duty of the Clerk to have the journal of each day's proceedings printed, and copies thereof placed on the files of the President, Senators and reporters within three days after approval by the Senate."— Subdivision 1 of Senate rule 4.

The Senate rule applies, of course, only to its journal of legislative proceedings; the publication of its journal of proceedings had with closed doors being expressly forbidden by rule 38. But the Senate may, and sometimes does, remove the injunction of secrecy as regards portions of these proceedings as well as the debate thereon; and either House may, at its discretion, direct the suppression or suspension of the publication of portions of its legislative proceedings.

"The fact that the journal is not printed and on the desks as required by the rules, is no valid objection to the reading of a bill in its regular order."— Speaker Malby, Assembly Journal, 1894, p. 274.

"The President shall take the chair at the hour to which the Senate shall have adjourned, and a quorum being present, the journal of the preceding day shall be read, to the end that any mistakes therein may be corrected."— Senate rule 1.

"The first business of each day's session shall be the reading of the journal of the preceding day, and the correction of any errors that may be found to exist therein."— Assembly rule 5.

The reading of the journal bringing under review all that transpired during the next preceding daily session, presents the opportunity to members, while fresh to the subject, of proposing corrections by way of amendment.

But this review is not final or conclusive against subsequent corrections. On information of a misentry or omission of an entry in the journal, a committee may be appointed to examine and rectify it and report it to the House.

So, under a reconsideration of the vote approving of the journal, errors of commission or omission may be corrected without the intervention of a committee, or even without a consideration, by unanimous consent.

No general rule, comprehensive or exclusive enough, can be laid down as to what should and what should not be entered on the journal. The Constitution and the Rules prescribe what shall be entered in certain cases. Usage and precedent are the only guides in all other cases.

Order of Business.

"After the reading and approving of the journal the order of business shall be as follows: 1. The presentation of petitions. 2. Introduction of bills by districts, in their numerical order. 3. Messages from the Assembly. 4. Messages from the Governor. 5. Reports of standing committees. 6. Reports of select committees. 7. Communications and reports from State officers. 8. Third reading of bills. 9. Motions and resolutions. 10. Special orders. 11. General orders, but messages from the Governor and Assembly and communications and reports from State officers may be received at any time, and the Committees on Rules, Engrossed Bills, Revision, and Privileges and Elections, when the report involves the right of a Senator to his seat, may report at any time, and it shall always be in order to call up for consideration a report from the Committee on Rules." —Senate rule 1.

"The first business of each day's session shall be the reading of the journal of the preceding day, and the correction of any errors that may be found to exist therein. Immediately thereafter, except on days and at times set apart for the consideration of special orders, the order of business, which shall not be departed from, except by a vote of two-thirds of the members present, to be determined by a call of the roll, shall be as follows: 1. Messages from the Governor and from the Senate, communications from State officers, reports from State institutions, and reports from the Committees on Revision and Printed and Engrossed Bills. 2. First reading of a bill by its title, and reference of the same. 3. Reports of standing committees in their order. (See Rule 18.) 4. Reports of select committees. After the foregoing orders have been finished the following shall be the orders of the day: For Mondays: 1. Bills on second reading; 2. Original resolutions by counties in alphabetical order, during months of January and February only; 3. Unfinished business (other than bills)

may be considered. For Tuesdays: 1. Bills on third reading; 2. Bills on second reading. For Wednesdays: 1. Bills on second reading; 2. Bills on third reading. For Thursdays: 1. Bills on third reading; 2. Bills on second reading. For Fridays: 1. Bills on second reading; 2. Bills on third reading. For Saturdays: 1. Bills on second reading. When the regular orders for any day shall be gone through, the following shall be the order of business: 1. Bills on third reading; 2. Bills on second reading. When the consideration of the orders of the day is not finished, those not acted upon shall be the orders for the next and each succeeding day until disposed, and shall be entered first in the calendar, without change in their order."—Assembly rule 5.

This prescribed round of business, which is substantially the same in both Houses, varied only by transposition and subdivision, may be superseded in whole or in part, or it may be, and often is, substantially inverted.

Thus, where a bill has been made a special order, to be taken up immediately after the reading of the journal or at a particular hour; in the one case the prescribed round of business may be entirely set aside for the day; in the other, all the orders not reached when the special order intervened. But the special order being disposed of and time permitting, either the regular order of business is taken up, commencing with introduction of bills, or business is resumed at the point where the special order found it.

So, in the absence of any special order, where it is desirable to reach any particular class of business before it comes up in turn, all intervening orders are successively laid on the table as soon as announced, to be resumed when the pressing business is disposed of, if time permit; but not until every order of business, succeeding and including the one thus reached, has been gone through with or disposed of by laying on the table.

The Presentation of Petitions.

The rules regulating the reception of petitions in both Houses are these:

"A Senator presenting a paper shall indorse the same; if a petition, memorial or report to the Legislature, with a brief statement of its subject or contents, adding his name; if a notice or resolution, with his name; if a report of a committee, a statement of such report, with the name of the committee and member making the same."—Senate rule 6.

"Petitions, memorials and remonstrances may be presented to the Clerk at the close of each day's session."—Assembly rule 14.

The questions that usually arise on the presentation of petitions are questions of reference. Generally they are referred by the Speaker, without motion or question put, to the standing committee indicated by the indorsement as the appropriate committee; or, if the bill or subject to which they relate is on the general or special orders, or before a standing or select committee, then to the committee of the whole or the standing or select committee having the bill or subject in charge.

Competing motions to commit have priority among themselves in the Assembly.

"When a question shall be under consideration no motion shall be received except as herein specified; which motion shall have precedence in the order stated, viz.: 1. For an adjournment of the House. 2. A call of the House. 3. For the previous question. 4. To lay on the table. 5. To postpone to a day certain. 6. To commit. 7. To amend. 8. To postpone indefinitely."—Assembly rule 24.

The question sometimes arises whether a petition or memorial is respectful in tone or language, or both, or whether the signatures are genuine.

The presentation of a petition or memorial of the opposite character being an abuse of a sacred right, and an indignity which cannot, with self-respect, be overlooked, the House, in a plain case, proceeds at once to vindicate itself; or, if the case calls for investigation, institutes an inquiry through a committee and awaits their report before taking action.

Petitions are seldom read except by the indorsement thereon. But by the Senate rule they must be read through if any Senator insists.

Motions to print petitions are subject to similar rules in both Houses. The rules and the practice in both Houses in regard to the reading and printing of petitions, papers, etc. are noticed elsewhere.

Forms of Indorsements.

All papers presented by a member are required by the rules to be properly indorsed.

If the paper is a petition, it must be indorsed legibly on the back, with a brief statement of the contents, together with the name of the member presenting the same, as for example:

Petition of certain citizens of New York, praying for a change of excise laws.
Mr. Jones.

If it be a resolution, it will only be necessary to add, on the upper or lower margin, the name of the mover, thus:

By Mr. Johnson.

Resolved, That when this House adjourns to-day, it adjourn to meet at eleven o'clock A. M., on Monday next.

Of Committees, Standing and Select.

Under the rules of both Houses all committees are appointed by the presiding officers, respectively, unless otherwise ordered.

"He (the President) shall appoint all committees, except when the Senate shall otherwise order."— Senate rule 2.

"All committees shall be appointed by the Speaker, except where the House shall otherwise order."— Assembly rule 2, subdivision 3.

The Senate sometimes, for obvious reasons, takes the appointment of committees into its own hands. In the Assembly, for like and equally obvious reasons, the power of appointment is always left in the hands of the Speaker.

The rules also prescribe what standing committees shall be appointed, and their duties generally.

"There shall be the following standing committees: To consist of eleven members each — Finance; Judiciary; Affairs of Cities; Railroads. To consist of nine members each — Canals; Commerce and Navigation; Codes; Insurance; Taxation and Retrenchment; Forest, Fish and Game Laws; Internal Affairs of Towns and Counties. To consist of seven members each - Banks; Military Affairs; Miscellaneous Corporations; Public Health; Penal Institutions; Revision; Affairs of Villages; Agriculture; Privileges and Elections. To consist of five members each —

Printed and Engrossed Bills; Indian Affairs; Trade and Manufactures; Public Printing. To consist of three members — Rules."— Senate rule 7.

"The standing committees shall be as follows, viz.: To consist each of thirteen members: 1. Ways and Means. 2. Judiciary. 3. General Laws. 4. Revision. 5. Codes. 6. Taxation and Retrenchment. 7. Canals. 8. Affairs of Cities. 9. Railroads. 10. Commerce and Navigation. 11. Insurance. 12. Banks. 13. Electricity, Gas and Water Supply. 14. Public Education. 15. Internal Affairs. 16. Labor and Industries. 17. Excise. 18. Affairs of Villages. 19. Fisheries and Game. To consist of eleven members: 20. Public Printing. 21. Public Health. 22. Public Lands and Forestry. 23. Public Institutions. 24. Military Affairs. 25. Soldiers' Home. To consist each of nine members: 26. Claims. 27. Federal Relations. 28. Charitable and Religious Societies. 29. State Prisons. 30. Privileges and Elections. 31. Trade and Manufactures. 32. Agriculture. 33. Indian Affairs. To consist each of five members: 34. Rules. 35. Printed and Engrossed Bills. 36. Unfinished Business."— Assembly rule 18.

In regard to the chairmanship of committees — when the appointment is made by the presiding officer — the parliamentary rule is this:

"The person first named is generally permitted to act as chairman, but this is a matter of courtesy, every committee having a right to elect their own chairman, who presides over them, puts questions and reports their proceedings to the House."— Jefferson's Manual.

But what is spoken of as a matter of courtesy has come to be a usage; the designation of chairman by the presiding officer never having been reversed or changed by the committee itself.

In cases where the Senate appoints the committees,

the chairmen thereof are usually designated when the committees are selected.

Standing committees continue through the session, unless sooner disbanded by the House.

Select committees, being always charged with some special duties, having reported thereon, are dissolved, and can act no more without a new lease of power. But they may be renewed by the House and the same matters recommitted to them respectively.

They may report in part only, and thus prolong their own existence until a final report is made, unless sooner discharged by the House.

The duties of standing committees are prescribed or understood to be, generally, to originate bills or resolutions touching matters coming within their jurisdiction, to inquire into and report on all such matters, when, in their opinion, the public good requires it, and on all matters referred to them, without unreasonable delay.

Certain standing committees are in addition specially charged with specific duties by the rules:

"The Committee on Revision shall examine and correct bills referred to it, for the purpose of avoiding repetitions and insuring accuracy in the text and references. It shall also report whether the object sought to be accomplished can be secured without a special act under existing laws, or by enactment of a general law."—Senate rule 9.

"The Committee on Revision shall examine and correct the bills which are referred to it, for the purpose of avoiding repetitions and unconstitutional provisions, insuring accuracy in the text and references, and consistency with the

language of the existing statutes. It shall also report whether the object sought to be accomplished can be secured without a special act, under existing laws, or without detriment to the public interest, by the enactment of a general law provided that any change in the sense or legal effect, or any material change in construction, shall be reported to the House as a recommendation and not as an amendment.) All bills other than Senate bills which have not been amended in the House shall be so referred prior to their third reading."— Assembly rule 19.

"All resolutions for printing extra copies of documents shall be referred to the Committee on Printing, which shall report on each resolution within seven days after such reference."— Assembly rule 16.

"All other resolutions calling for or leading to expenditures shall be referred to, and reported on, by the Committee on Ways and Means."— Assembly rule 17.

Select committees are charged with their peculiar duties, when appointed, and cannot go beyond the line thus marked out for them.

In the composition of standing and select committees there is this difference:

Select committees are "nursing committees," so called because always favorable, or a majority thereof, to the object of the petition or bill or other matter committed to them. The rule that "the child is not to be put to a nurse that cares not for it" [Jefferson's Manual], is always observed in selecting them.

Standing committees, one the other hand, are deemed to be selected with reference solely to their fitness for the duties generally assigned them, and their capacity to act without bias and favoritism as regards the interests of localities or individuals, where they conflict with the general interest or welfare.

The powers of committees and the limitation thereof may be thus summed up:

Committees have full power over the bill or other paper committed to them.

They cannot sit during the stated sessions of the House.

They can only act when together, and not by separate consultation and consent, nothing being the report of the committee but what has been agreed to in committee actually assembled.

But this rule is subject to qualification, as when a committee is directed by the House to amend a bill or other matter, and to report it back forthwith. In such a case, having no time for meeting and consultation, nor any discretion to exercise, they have no other alternative but to comply with the order of the House.

A majority of a committee must concur in a report:

Sometimes a committee is so constituted that the views of a majority cannot be concentrated; in which case, its members may, on leave, submit their views, singly or otherwise, as to numbers, in the form of a report, or ask a discharge, or both. It is seldom, if ever, that either is refused.

Specific powers are conferred on committees by the Legislative Law which confers on the charman of any committee, either of the Senate or Assembly, or of any joint committee, the power to administer oaths to all witnesses coming before such committee for examination.

It also authorizes the chairman of any committee which, by the terms of its appointment, shall be authorized to send for persons and papers, to issue, under the direction of the committee, compulsory process for the attendance of any witness within the State, whom the committee may wish to examine.

It also provides that every such chairman shall have power, under the direction of the committee, to issue a commission for the examination of any witnesses who shall be without the jurisdiction of this State, or if within the State, shall be unable to attend, or who shall, for special reasons, be excused by the committee from attendance.

It also provides that, whenever a committee shall obtain authority for the purpose from the House or Legislature by which it shall be appointed, it may issue such commissions to be executed during the recess of the Legislature.

Reports of Standing Committees.

But messages from the Governor and Assembly, communications and reports from State officers, reports from the Committee on Privileges and Elections involving the right of a Senator to his seat, and reports from the Committee on Engrossed Bills, on Revision and on Rules shall be received at any time. The Committee on Rules may sit at any time; consideration of its report shall always be in order, debate on its adoption shall not exceed one hour, one-half hour for and one-half hour against, and no other motion shall be in order until the vote of the Senate is had thereon.—Subdivision 11 of Senate rule 1.

"The order of business shall not be departed from except by a vote of two-thirds of the members present to be determined by a call of the roll."—Assembly rule 5.

Reports of standing committees can be made only in their turn, without consent or a suspension of rules.

Such reports, being in compliance with the express or implied order of the House, are received and entertained, when made in order, as of course, and without leave asked or question put.

They are either oral or written — generally written. They must be in writing in certain obvious cases.

Being advisory or suggestive — except those of the Committee on Engrossed Bills — and without effect until sanctioned by the House, they always accompany the petition, bill, resolution or other paper to which they relate, and are disposed of along with it.

The action of the House on these reports varies, necessarily, according to their nature, and the circumstances of each case. Thus:

If the report be accompanied by an original bill, in accordance with the prayer of a petition, or the order of the House, or the Committee's own views of the public interest or policy, such bill must have its first and second readings, constructively or otherwise, before any disposition can be made of it. It may then pass directly to the Committee of the Whole, to take its place and turn on the General Orders, or be made a special order, or tabled or recommitted or postponed.

If the report be favorable to a bill, with or without amendment, such bill having had two readings before its reference, is in a condition to be disposed of in either of the modes indicated in the last pre-

ceding paragraph. It usually goes, *sub silentio*, directly to the Committee of the Whole.

"No bill shall be amended or committed until it shall have been twice read."— Senate rule 18.

If the report be adverse to a bill, the question of agreeing to the report may be taken forthwith. If the House agree, the bill is deemed to be rejected. If the House do not agree, or the question of agreement be not taken, the report and bill go together to the Committee of the Whole, unless some other disposition be made of them, by tabling, recommitment or postponement.

"Every report of a committee upon a bill, which shall not be considered at the time of making the same, or laid on the table by a vote of the Senate, shall stand upon the general orders with the bill, and be entered on the journal."— Senate rule 10.

"All bills reported favorably or for consideration, if reported with amendments, shall be immediately reprinted, and the amendments proposed by the committee shall be printed underscored in their proper position, except in cases where the committee recommend striking out certain words, in which case they shall be printed enclosed in black-faced brackets.

"All bills favorably reported shall, if the report be agreed to, be placed on the order of second reading; but where a bill has been reported adversely, and such report shall be agreed to by the House, it shall be considered as rejected."— Assembly rule 11.

If the report be neither favorable nor adverse—that is, if a bill or other proposition be reported back "for

the consideration of the House," it may be recommitted for an opinion, or disposed of as other bills coming from a Committee with a favorable report thereon.

If the report be favorable or adverse to amendments by either House to bills originating in the other, the question of concurrence may be, and generally is, at once put to a vote. But the report may be recommitted, tabled or postponed. If the report be favorable to such amendments, with amendment, the question of concurrence in the amendments, as proposed to be amended, may be disposed of in either of the modes mentioned. But in all cases the amendments, whether of the other House or of the Committee, or both, are open to debate and amendment.

If the report be favorable or adverse to a joint resolution, or resolution amendatory of the Constitution, which go through a form of proceeding similar to that prescribed for bills, such resolution or resolutions may take any direction usually given to bills reported on by Committees, or be disposed of in like manner.

"All resolutions which propose any amendment of the Constitution, shall be treated, in the form of proceedings on them, in a similar manner with bills."—Senate rule 18.

If the report be favorable or adverse to a resolution or resolutions of any other character, it or they may be finally acted on forthwith, or be tabled, recommitted, postponed or made a special order.

If the Committee report a bill "complete" under authority from the House, the question of agreeing to the bill as it came from the Committee, may be superseded by motions to amend, to lay on the table, to recommit or postpone. But, if the House agree, the bill passes to a third reading; if not, the bill is in the same condition as if reported by the Committee of the Whole, and disagreed to.

The practice of recommitting bills to report complete has been discontinued as an unsafe mode of legislation.

If the report be adverse to a petition, the question of agreeing is usually taken at once. If the report be agreed to, the prayer of the petition is denied. But the question of agreeing may be tabled or postponed, or the petition and report recommitted.

Not unfrequently bills coming from Committees with favorable reports are recommitted. They may be ordered at once to a third reading. But this cannot be done without unanimous consent, or under a suspension or abrogation of rules.

"No bill shall be ordered to a third reading without having been acted upon in committee of the whole."— Senate rule 18.

"Every bill shall receive three separate readings, and on three different days, previous to its passage, except by unanimous consent, or when made a special order."— Assembly rule 13.

In all cases where the report of a Committee is laid on the table, or postponed, or adjourned, it can be taken up again only when reports of such Commit-

tees are in order, unless some future day and hour be assigned for its consideration, when so tabled, postponed or adjourned.

Reports of Select Committees.

The proceeding remarks in regard to the reports of Standing Committees apply, without exception, to the reports of Select Committees.

Report — Minority.

It sometimes happens that one or more members of a Committee will dissent from the views of the majority, and that they will naturally desire to express their antagonistic opinions in a written paper. This paper is usually called a "minority report." But the term is an inaccurate one, since the decision of parliamentary law is, that the minority of a Committee cannot make a report, a minority not being a Committee.

Messages from the Governor.

The Governor's messages received during the session, whether communicating his approval of bills that have passed both Houses, or covering expressions of other State Legislatures on matters of general concern, or recommending legislative action, or reiterating former recommendations, though always receivable, are usually allowed, except in pressing emergencies, to take their turn in the prescribed order of business.

Messages from the Governor at the opening of a regular or extra session, or communicating, during the session, his objections to bills that have passed both Houses, take precedence of all other business, are read *in extenso*, as soon as received, and entered on the Journal, and ordered printed for future consideration.

Veto messages, after being read and entered on the Journal, are either laid on the table or the bills to which they relate are taken up and acted on.

Messages of other descriptions, after being read, are referred to some appropriate Committee or Committees.

Communications from State Officers.

These are either the annual reports required by law from the departments of State, or they are in response to inquiries calling for information on matter of fact, or for opinions on points of law, or for statistics in relation to certain branches of the public service.

Though always receivable, they generally take their turn, like ordinary messages from the Governor.

The annual reports from the Departments are never read beyond the introductory communication indicating their tenor; but they are at once referred to the appropriate Committee.

Casual reports from the Departments, in answer to inquiries, are usually read, in whole or in part, before reference.

Messages from one House to the Other.

These are usually disposed of as soon as received,, or as soon as the pending business will permit.

If the message transmit a bill for concurrence, such bill, after having had its first reading, must be referred, under the Assembly rule, to a Standing or Select Committee.

"Every message from the Senate, communicating any bill for the concurrence of the House, shall, with the accompanying documents, if any, be referred to a standing or select committee to consider and report thereon."—Assembly rule 10.

"Every bill shall be introduced by a Senator in his place, or on the report of a committee, or by message from the Assembly, and after its first and second reading unless

otherwise ordered by the Senate, shall be referred to a standing or select committee, to consider and report thereon. When a bill is received as a message from the Assembly, and Senate bill, identical therewith, is on the order of third reading in the Senate, or in the committee of the whole, the Assembly bill may be substituted for the Senate bill upon a vote of a majority of the Senate. A motion for such substitution shall be in order under the order of business of messages from the Assembly, motions and resolutions, or the order of business in which the Senate bill is."— Senate rule 16.

If the message announce the passage of a bill with amendments, such amendments, by the practice of the Senate, may be acted on at once, concurred in with or without amendment, or non-concurred in, or referred to a Standing or Select Committee.

"Every such message communicating an amendment shall be referred to the committee which reported the measure proposed to be amended, with power to report at any time."— Assembly rule 10.

If the message communicate a joint resolution or resolutions for concurrence, it or they are, by custom and practice, laid on the table for one day, the same as concurrent resolutions introduced by members of the House; but if the message communicates amendments to resolutions for concurrence, the question of concurrence may be at once taken, or it or they may be referred, or made a special order, or otherwise temporarily disposed of.

Notices.

These are either notices of motions to be made to suspend, change or rescind a rule or for a call of the House.

Notices of the latter class are rare, nor are they required by the rule; but they are sometimes given to secure a full attendance on some important occasion by compulsion, if need be, or through fear thereof.

Motions and Resolutions.

The motions and resolution admissible under this order of business, are such as propose to amend the Constitution, to suspend, change or rescind an existing rule, to adopt a new one, to instruct Committees, to raise new Committees, to call for information or opinions from State officers, to make special orders, etc., etc., being such motions and resolutions as constitute a class distinct from those which occur during the pendency of business, and have reference to the disposition thereof.

Joint or concurrent resolutions are offered under the order of Motions and Resolutions. After lying over one day, they may be called up for action whenever the same order of business is reached. If passed, they are delivered by the Clerk to the other House, and after being acted upon, are returned to the House in which they originated, with an appropriate message. Certain resolutions, such as amend the Constitution, etc., after passing both Houses, are engrossed and delivered by the Clerk of the House in which they originated, to the Secretary of State, and are published at the end of the volume of Session Laws.

"All resolutions which propose any amendment to the Constitution shall be treated, in the form of proceedings on them, in a similar manner with bills, and no bills shall be ordered to a third reading without having been acted upon in committee of the whole."— Senate rule 18.

The Assembly has no rule on the subject; but there, proposed amendments of the Constitution are treated

in form like bills, though not acted on in Committee of the Whole, and have their final reading when engrossed, and are finally acted on as bills are on a third reading.

All concurrent resolutions relating to adjournments, or recalling bills from the Governor or Senate, are, under rule 31 of the Assembly, privileged and may be offered at any time the member can obtain recognition for that purpose.

All resolutions, whether concurrent or not, and all motions should be in writing and sent to the Clerk's desk.

Of these motions and resolutions there are those which must be laid over one day, under the rules of both Houses, as of course, and others, which may or may not be, as the House may direct.

"When a question has once been put and decided, it shall be in order for any Senator to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment or motion, upon which the vote was taken, shall have gone out of the possession of the Senate; and before the first day of March, no bill or resolution shall be sent from the Senate on the day of its passage; nor shall any motion for reconsideration be in order unless made on the same day on which the vote was taken, or within the next three days of the actual session of the Senate thereafter. Nor shall any question be reconsidered more than once. But when a bill or resolution shall have been recalled from the Governor or from the Assembly, a motion for reconsideration may be made at any time thereafter while the same is in the possession of the Senate, and all resolutions

recalling a bill or resolution from the Governor or Assembly shall be regarded as privileged. No vote shall be reconsidered upon either of the following motions:

"To adjourn.

"To lay on the table."—Senate rule 30.

"All concurrent resolutions shall lie on the table at least one day, except as otherwise directed in rules 18 and 30, and except concurrent resolutions referring to adjournment."—Senate rule 31.

"The following classes of resolutions shall lie over one day for consideration, after which they may be called up as, of course, under their appropriate order of business:

"1. All concurrent resolutions, except resolutions in reference to adjournments, and those recalling bills from the Governor or Senate, which shall be regarded as privileged.

"2. Resolutions containing calls for information on the Executive department.

"3. Resolutions giving rise to debate, except such as relate to the disposition of matters immediately before the House, such as relate to the business of the day on which they were offered, and such as relate to adjournment or taking recess for a day."—Assembly rule 15.

There is a class of motions which must be referred as of course.

"All resolutions for the printing extra copies of documents shall be referred to the Committee on Printing, which shall report on each resolution within seven days after such reference."—Assembly rule 16.

"All other resolutions calling for, or leading to expenditures shall be referred to, and be reported on, by the Committee on Ways and Means."—Assembly rule 17.

Unfinished Business.

This order of business is peculiar to the Assembly, and includes bills or resolutions originally on the order of second reading which have been acted on but not disposed of.

Bills thus acted on, but not disposed of, constitute a preferred class of bills on second reading, and have precedence over those that have not been reached, if their consideration be insisted on.

Unfinished business of every other description can be called up only when the order of business to which it belongs comes around in turn.

Special Orders of the Day.

Where a bill has been made a special order for a particular day, without any other specification as to time, it must await the announcement of the order of business before it can be reached.

Thus it sometimes happens that a special order for a certain day is not reached at all; and hence the practice in making special orders, of specifying, not only the day, but the hour or stage in the daily routine of business when such special order shall be taken up.

Bills that are made special orders are, of course, considered in the order of business in which they stand. Resolutions contemplating an amendment of the Constitution, are acted on in the same manner as bills.

The rules of the two Houses touching special orders are as follows:

"Whenever any bill or other matter is made a special order for a particular day, and it shall not be completed on that day, it shall, unless otherwise ordered, retain its place on the calendar, as a special order in the order of business in which it was considered; and when a special order is under consideration, it shall take precedence of any special order for a subsequent hour of the same day: but such subsequent special order may be taken up immediately after the previous special order has been disposed of."— Senate rule 12.

"Any matter may be made a special order for any particular day, by the assent of two-thirds of the members present. When so made, a similar vote shall be requisite to rescind or postpone."— Assembly rule 22.

During the last ten days of the session a notice may be given requesting that any matter be made a special order, or that the rules be suspended for the purpose of reading a bill out of its order, which shall be referred, without debate, to the Committee on Rules. The member making the motion or giving the notice shall submit in writing the reasons for making such special order or suspension, and attach thereto a copy of the bill.

The Committee may report at any time, and such report shall stand as the determination of the House, unless otherwise ordered by a vote of two-thirds of the members present, and the Committee shall not be discharged from the further consideration of any matter pending, unless by a like vote.

Assembly rule 23.

Of the Rights, Powers and Duties of the President and Speaker.

"He (the Lieutenant-Governor) shall be President of the Senate, but shall have only a casting vote therein."— Constitution, art. 4, § 7.

"The President shall preserve order and decorum; in case of any disturbance or disorderly conduct in the lobby he shall have power to order the same to be cleared; he shall decide all questions of order, subject to appeal to the Senate. On every appeal he shall have the right, in his place, to assign his reasons for his decision; he shall appoint all committees, except when the Senate shall otherwise order. When the Senate shall be ready to go into committee of the whole, he shall name a chairman to preside therein."— Subdivision 1 of Senate rule 2.

"He shall assign to the Doorkeepers their respective duties and stations."— Subdivision 2 of Senate rule 2.

"The Speaker shall take the chair each day at the hour to which the House shall have adjourned. He shall call to order, and, except in the absence of a quorum, shall proceed to business in the manner prescribed by these rules."— Assembly rule 1.

"He shall possess the powers and perform the duties herein prescribed, viz.: 1. He shall preserve order and decorum, and, in debate, shall prevent personal reflections, and confine members to the question under discussion. When two or more members rise at the same time, he shall name the one entitled to the floor. 2. He shall decide all questions of order subject to appeal to the House. On every appeal he shall have the right, in his place, to assign his reason for his decision. In case of such appeal no member shall speak more than once. 3. He shall appoint all committees, except where the House shall otherwise order. 4. He may substitute any member to perform the duties of the chair for a period not exceeding two consecutive legislative days, but for no longer period, except by special consent of the House. 5. He shall designate the persons who shall act as reporters for the public press, not exceeding thirty in number; but no reporter shall be admitted to the floor who is not an authorized representative of a daily paper. Such reporters, so appointed, shall be entitled to such seats as the Speaker shall designate, and shall have the right to pass to and fro from such seats in entering or leaving the Assembly Chamber. 6. He shall not be required to vote in ordinary legislative pro-

ceedings, except where his vote would be decisive. 7. He shall have general control, except as provided by rule or law, of the Assembly Chamber and of the corridors and passages in that part of the Capitol assigned to the use of the Assembly. In case of any disturbance or disorderly conduct in the galleries, corridors or passages, he shall have power to order the same to be cleared, and may cause any person guilty of such disturbance or disorderly conduct to be brought before the bar of the House. In all such cases the members present may take such measures as they shall deem necessary to prevent a repetition of such misconduct, either by the infliction of censure or pecuniary penalty, as they may deem best, on the parties thus offending. 8. He shall also be ex-officio member and Chairman of the Committee on Rules."—Assembly rule 2.

The rights, powers and duties of the presiding officer, Senators and Clerk are discussed at length in the majority and minority reports of the Senate Committee on the Judiciary, which appear in the Senate Journal of 1894 at page 1556 *et seq.*

The Speaker of the House has a right to appoint a substitute for a period not exceeding two consecutive legislative days, while in the absence of the Lieutenant-Governor the temporary President acts as President.

The temporary President, Speaker and Speaker *pro tem.*, whilst they retain their right to vote when presiding, being members of their respective Houses, part with the right to participate in debate or to speak from the chair, except on points of order, being subject in this respect to the rule applicable to their principals.

The rule of the Assembly which gives the Speaker the right to assign reasons for a decision, under an appeal, virtually recognizes the general rule thus broadly laid down in the Manual.

The President of the Senate has only a casting vote therein, and on appeals may, in his place, assign reasons for his decision.

Of Appeals.

An appeal from a decision of the chair brings under review, and opens to debate, the grounds of such decision.

The Speaker, by the rules of the House, and the President of the Senate, by usage and courtesy, have the right to assign reasons for a decision before the question is put on the appeal.

The form of the question on an appeal is not, "Shall the appeal be sustained?" but "Shall the decision of the Chair stand as the judgment of the House?" or "the Senate," as the case may be.

Of course, such decision, unless affirmed by a majority of the members present and voting, is reversed.

Whether the Speaker of the House may, of right participate in the vote on affirming his own decision is a question which would, perhaps, never have been mooted, but for the fact of such participation in a single instance in the legislative history of the State. But since, with this exception, the right, if it exist, has been always waived and the decision left with the appellate tribunal, the matter may be safely left to repose where it is.

The question whether the President of the Senate may not of right give a casting vote on an appeal from his own decision had a similar, if not a contemporaneous origin, and was at the time the topic of extended debate and of remark in and out of the Senate.

The affirmative argument was that the Constitution gives the President the right to determine all questions on which the Senate shall be equally divided, except questions on the final passage of bills or joint resolutions (which can only be carried by the affirmative vote of a majority of two-thirds of all the Senators elected), and that his casting vote on an appeal, which settles

the law of the Senate in a particular case, is as much a matter of right as in the case of an equally divided Senate on the question of adopting the standing rules or any of them in the outset.

The negative position is, that were there nothing in the nature of an appeal from the decision of the Chair, to exclude the President from voting on it, the form of the question, "Shall the decision of the Chair stand as the judgment of the Senate?" itself, in terms, excludes his vote, the President not being a member of the Senate. That if the President has a right to untie a vote on the adoption of the rules in the beginning, he has no right to decide, for the Senate, questions of construction involved in an appeal, and thus, in effect, to enact rules which a majority of the Senate refuse to sanction.

The rule of most frequent application in cases of appeal is that which forbids the piling of one appeal on another. No second appeal can be entertained whilst the original is undisposed of.

Another rule, not less essential to prevent confusion and embarrassment, is that which forbids an appeal from a mere dictum or opinion of the Chair, drawn out by interrogatories on points of order. Such opinions or dicta must take the form of actual decisions on questions legitimately coming up in the progress of business before they are subject to an appeal.

Motion to table an appeal from a decision of the Chair does not carry with it the subject-matter; it carries only the appeal.

Of Order and Decorum.

The rules of the two Houses for the preservation of order and decorum during business are as follows:

"Senators shall not speak to each other or otherwise interrupt the business of the Senate, or read any newspaper while the Journals or public papers are being

read; or walk out of or across the chamber when the President is putting a question, or when a Senator is speaking pass between him and the Chair."— Subdivision 2 of Senate rule 6.

"A Senator rising to debate or to present a petition or other paper, to give a notice, make a motion or report, shall address the President and shall not proceed further until recognized by the Chair; he shall speak on the same subject but twice the same day without leave of the Senate; and where two or more Senators address the Chair, the President shall name the Senator who is first to speak."— Subdivision 3 of Senate rule 6.

"All motions shall be reduced to writing, if desired by the President or any Senator, delivered to the Clerk and read before the same shall be debated. Any motion may be withdrawn at any time before decision or amendment."— Senate rule 26.

"When a Senator shall be called to order he shall take his seat until the President shall have determined whether he is in order or not, and if decided to be out of order, he shall not proceed without the permission of the Senate; and every question of order shall be decided by the President, subject to an appeal to the Senate by any Senator, and no second appeal shall be determined until the original appeal shall be decided; and, if a Senator shall be called to order for words spoken, the words excepted to shall be immediately taken down in writing."— Senate rule 36.

"The Speaker shall preserve order and decorum, and shall decide all questions of order, subject to an appeal to the House."— Assembly rule 2.

"While the Speaker is putting a question, or a count is being had, no member shall speak or leave his place."— Assembly rule 40.

"When a motion to adjourn is carried, the members and officers shall keep their seats and places until the Speaker declares the House adjourned."— Assembly rule 41.

"No member rising to debate, to give notice, make a motion or report, or to present a petition or other paper, shall proceed until he shall have addressed the Speaker and have been recognized by him."—Assembly rule 38.

"While a member is speaking, no member shall entertain any private discourse, or pass between him and the Chair."—Assembly rule 39.

"No member shall speak except in his place, nor more than twice upon any question without leave of the House. No member shall speak for more than fifteen minutes at a time except by consent of two-thirds of the members present."—Assembly rule 42.

"If any member in speaking transgresses the rules of the House, the Speaker, or any member may call to order; in which case, the member so called to order shall immediately sit down and shall not rise unless to explain or proceed in order."—Assembly rule 43.

The rules of the two Houses indicate, to a limited extent only, points of order that may arise during the progress of business.

Jefferson's Manual states other cases of not unfrequent occurrence. For instance:

It is deemed a breach of order, in debate, to speak impertinently or beside the question, superfluously or tediously; to reflect on any proceeding or determination of the House, unless with a view to, or in support of, a motion to rescind; to allude to a member by name, or to indulge in personalties toward him by arraigning his motives in his official course, or otherwise; to allude to what has been said in the other House on a subject under debate, or to the particular votes or majorities on it there; or to speak disrespectfully of the other branch, or to interrupt a member in his speech by hissing, coughing, calls for "the question," etc., etc.

So it may be added, it is a breach of order to applaud a member by clapping of hands or stamping of feet.

A member called to, and decided to be out of order in debate cannot proceed, even in order, if objections be made, without leave of the House.

On the other hand, it is a breach of order in the Chair to refuse to put a question which is in order.

The grosser breaches of order, such as assaults and affrays, and the proceedings thereon, are treated of fully in Jefferson's Manual.

Most of the questions ordinarily occurring in legislative business are specifically provided for by the standing rules of the House; but questions and complications of questions often arise for which no provision has been made. In the determination of these, the custom is to follow precedent, or the usual parliamentary practice, where it is known. "Cushing's Manual" is the authority usually referred to in cases of this kind, because of its supposed applicability to most questions likely to occur in legislative business, and approaches more nearly, in the practice it lays down, to that which has of late years prevailed in the Legislature.

Order in Debate.

It is a breach of order to speak impertinently or beside the question superfluously or tediously. To reflect on any determination or proceeding of the House, unless with a view to or in support of a motion to rescind. To allude to a member by name or to indulge in personalities by arraigning a member's motives in his official course, or to allude to what has been said in the other House, or to the particular votes or majorities given on any measure there, or to speak disrespectfully of the other branch.

Order of Business.

When gone through with can only be resumed by unanimous consent.

Lt.-Gov. Saxton, Senate Journal, 1896, p. 386.

Motion to suspend can only be made in order of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1897, p. 1325.

Of the Rules in Regard to Voting.

"Upon a division in the Senate, the names of those who voted for or against a question, shall be entered alphabetically on the Journal, if any Senator requires it, except upon motion to excuse a Senator from voting, which shall be decided by count; and each Senator called upon, unless for special reasons he is excused by the Senate, shall declare openly and without debate, his assent or dissent to the question."—Senate rule 37

"Every member who shall be within the bar of the House when a question is stated from the Chair, shall vote thereon, unless he is excused by the House, or unless he is directly interested in the question. Nor shall the roll of absentees be more than once called. The bar of the House shall be deemed to include the body of the Assembly Chamber."—Assembly rule 32.

"Any member requesting to be excused from voting, upon the final passage of a bill or upon the passage of a resolution requiring the expenditure of money, may make, when his name is called, a brief statement of the reasons for making such request, not exceeding two minutes in time; and the House, without debate, shall decide if it will grant such request; but nothing in this rule contained shall abridge the right of any member to record his vote on any question previous to the announcement of the result."—Assembly rule 51.

The rules of both Houses permit a member, when called upon to vote, to ask to be excused, and to assign, of course, briefly, and by the Assembly rule, verbally, his reasons. If not excused, his refusal or neglect to vote is a breach of order, and punishable as such.

But the member refusing or omitting to vote, to be amenable to punishment, must have had every opportunity which the rules secure to understand the question on which he is required to put himself on record; a previous compliance with all the other rules that are applicable being necessary to sanction the infliction of punishment in such a case.

Votes — Change of.

In a legislative body no member is allowed, under any circumstance, to vote or change his vote after the result is announced by the chair. Under such circumstances, a member, if he desires to have his opinion known, may, if allowed, have a statement put upon the journal as to the way he would have voted. Warrington, p. 25.

Vote — Tie.

When there is a tie vote the motion fails unless the chair gives his vote in the affirmative. Roberts, p. 94.

Of Privileged Questions.

Privileged questions are so-called, because they are exceptions to the general rule, that the question first moved and seconded must be first put.

Privileged questions are either made such by special rule or parliamentary usage, or they are

necessarily incidental to, and arise out of, other questions, privileged or not.

Privileged questions, of course, take the place of and must be decided before the primary question, or the question to which they are incidental.

Privileged questions not only take the place of the primary question or the question to which they are incidental, but they may take the place of each other, being of different grades among themselves, and having precedence one over another.

The class of privileged questions established by special rule will be first considered.

They are privileged questions on filling blanks:

"When a blank is to be filled, and different sums or times shall be proposed, the question shall be first taken on the highest sum and longest time."— Senate rule 29.

There is then the class of privileged questions generally; that is, such as are equally applicable whatever the question before the House.

"When a question is before the Senate, only the following motions shall be received, and such motions shall have precedence in the order here stated, viz.: 1. For an adjournment. 2. For a call of the Senate. 3. To lay on the table. 4. To postpone indefinitely. 5. To postpone to a certain day. 6. To commit to a standing committee. 7. To commit to a select committee. 8. To commit to the committee of the whole. 9. To amend. The motion to adjourn or for a call of the Senate or to lay on the table shall be decided without debate, and shall always be in order, except as provided in rules 1-33 and 48."— Senate rule 25.

"When a question shall be under consideration no motion shall be received, except as herein specified, which motions

shall have precedence in the order stated, viz.: 1. For an adjournment of the House. 2. A call of the House. 3. For the previous question. 4. To lay on the table. 5. To postpone to a certain day. 6. To commit. 7. To amend. 8. To postpone indefinitely."— Assembly rule 24.

It will be perceived that the rules of both Houses establish a class of privileged questions, and give priority to one privileged question over another, assigning to the question of adjournment the foremost grade.

But it does not follow that, aside from the question of adjournment, there is no gradation, as to priority among the privileged questions established by the rules. Parliamentary usage assigns them such priority, one over another. Thus the question of tabling, though last moved, supersedes the question of amendment, postponement or commitment. Again, amendment and commitment competing, the latter question, though last moved, is first put. And again, amendment and postponement competing, postponement, though last moved, is put first.

It will be perceived, also, that with the exception of the questions of adjournment and of a call of the House, the entire class of privileged questions in both Houses, have reference to the original or primary questions, usually called the main question; that is, their object and effect is to amend, postpone, commit, table or precipitate such main question.

But the point, nevertheless, sometimes arises, whether one privileged question can be moved on another — that is, whether it be admissible — a privi-

leged question being before the House, to move another privileged question having reference to it and not to the primary or main question. For example, a motion is made to amend, commit or postpone the primary or main question — it is admissible to move to lay on the table such motion to commit, amend or postpone, instead of the primary or main question.

The parliamentary rule forbids it, not only because of the absurdity of thus separating the incidental from the principal question, but because to lay on the table the motion to commit, amend or postpone is indirectly to reject it, and that result can be better attained by a direct vote on the question of amending, postponing or committing. But the practice in the Assembly permits such a motion. To avoid the embarrassment and complication which inevitably must result from the piling of one privileged question on another, it is not admissible to move to amend, or table, or postpone, or commit the question of adjournment, or for the previous question, or for laying on the table, or for a call of the House.

Nor, under the Assembly rule defining what the main question shall be in all cases nor in view of its phraseology, is it admissible to prequestion any of the privileged questions enumerated in the latter rule, inasmuch as the motion for the previous question can have reference only to the primary or original question.

Nevertheless there are cases where the reason for the prohibition and the rule itself fall together

Thus, a motion to postpone the primary or main

question, being before the House, it is admissible to amend so as to postpone to one day instead of another or to a special instead of an indefinite time.

So, a motion to commit the primary or main question, being before the House, it is admissible to amend by adding instructions, or to change the committee.

And so, a motion to amend the primary or main question, being before the House, it is admissible to move to amend the amendment, though inadmissible to move an amendment in the third degree.

Besides the privileged questions made such by special rule, there is a class which parliamentary usage has established. Thus:

If it be proposed to amend by inserting a paragraph, or part of one, motions to amend or perfect the matter proposed to be inserted, must be put to a vote before the question is taken on inserting.

So, also, if it be proposed to amend by striking out a paragraph, motions to amend or perfect the matter proposed to be struck out, must be put to a vote before the question is taken on striking out.

These rules of priority or privilege apply, of course, where the motion is to strike out and insert, the matter proposed to be struck out, as well as that proposed to be inserted, being amendable, before the question is put, on striking out and inserting; and this, whether the motion be divided or not.

There is still another class of privileged questions, which are incidental to other questions, whether privileged or not. Thus:

Questions of order arising out of other questions take the place of such questions, and must be decided before them.

So, matters of privilege, arising out of any question, or from a quarrel between two members, or affecting the rights or character of the House, or of individual members, supersede the consideration of the original question, and must be first disposed of.

So, also, questions on reading papers relative to the question before the House must be put before the principal one; and questions of leave to withdraw motions, or appeals from the decision of the Chair, have a like priority over the question before the House.

Of Coexisting Questions.

From the preceding remarks on privileged questions, it follows that at least two distinct propositions may be pending at the same time. That is, there may be a primary or main question, and a privileged question overriding it for the time being, if not a question of order or of privilege taking precedence of both.

Hence, the importance of determining to what extent these coexisting questions may be debated, whilst thus pending together.

The rules of the two Houses regulating all this are as follows:

"A motion to postpone, commit or refer, until it is decided, shall preclude all debate of the main question."—Senate rule 28.

"The previous question shall be put as follows: 'Shall the main question now be put?' and until it is decided, shall preclude all amendments or debate. When on taking the previous question, the House shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate," etc.— Assembly rule 28.

By the Senate rule, under a motion to commit, the main proposition cannot be debated nor amended.

The motion to adjourn, being always in order by the rules of both Houses, and not debatable or amendable, precludes all debate or amendment either of the main question or of any privileged question pending when it is made.

Of course, in all cases where a privileged question intervenes, the main question remains in abeyance until such privileged question is decided, and such decision either removes the main question from the consideration of the House, for the time being, or until a day certain, or indefinitely, or leaves it open to further privileged questions, or places it nakedly before the House for a final vote.

An adjournment, pending a debate on a privileged or on the main question, or both, leaves the matter where it is, to come up again in regular order. So, if the whole subject be laid on the table, except that the previous question cannot be laid on the table. But a question of privilege, touching the rights of individual members, or of the House, may be brought up at any time during the progress of business.

Of the Division of Questions.

The rules of the two Houses permitting the division of questions are these:

"If the question in debate contains several points, a Senator may have the same divided, provided the division called for embodies a distinct principle or statement of fact."— Senate rule 27.

"If any question contains several distinct propositions, it shall be divided by the Chair at the request of any member, but a motion to strike out and insert shall be indivisible."— Assembly rule 46.

The only general rule that can be laid down touching the divisibility of questions is this:

"A question to be divisible must comprehend points so distinct and entire that one of them being taken away the other may stand entire."— Jefferson's Manual.

By the rules of both Houses the Chair is to decide all questions of divisibility, subject always to an appeal to the House.

The Assembly rule forbids the division of the question on striking out and inserting. But, practically, the prohibition or the permission is of little consequence as will be seen in what is said elsewhere, of equivalent questions.

The right to have any question divided, which is susceptible of division, is not without qualification. Thus the question on the final passage of a bill, though divisible, cannot be divided, and put piecemeal, by sections.

But questions of concurrence, in amendments, sent by one House to the other, may be divided, if divisible.

The point has been mooted in the Assembly, whether a division of a question, which is divisible, can be insisted on after the previous question has been ordered. The negative argument is that, to permit a division of a question, under such circumstances, may result in essential modifications of the main proposition, and, consequently, in an evasion of the effect of the previous question. But the practice has been uniformly to permit divisions of a question, where it can be divided, whether such division be called for before or after the previous question was ordered.

Another point is this: A question having been divided, and one member put to vote, whether debate and amendment are admissible on the next succeeding member, no previous question having been ordered, and so on. The rule laid down in Jefferson's Manual permits debate and amendment under such circumstances, on grounds similar to those which permit debate and amendment, after the affirmative has been, and before the negative of a question is put; a rule, however, which applies only where a question is taken by a count, or by tellers, or by acclamation (when the affirmative is first ascertained and then the negative), and not when it is taken by yeas and nays, when the affirmative and negative votes are recorded *pari passu*.

Jefferson says: "A question to be divisible must comprehend points so distinct and entire, that one of them being taken away the other may stand."

Of Equivalent Questions.

"Where questions are perfectly equivalent, so that the negative of the one amounts to the affirmative of the other, and leave no other alternative, the decision of the one concludes necessarily the other. Thus, the negative of striking out amounts to the affirmative of agreeing; and, therefore, to put a question on agreeing after that of striking out [has been negatived] would be to put the same question, in effect, twice over."—Jefferson's Manual.

Hence, no doubt, the Assembly rule, that a motion to strike out and insert shall be indivisible; but it may well be questioned whether such a rule is necessary to avoid the effect of the parliamentary rule, cited above, and for these reasons:

A motion to strike out and insert is an entirety. If put as a whole, and negatived, that does not preclude a subsequent motion to strike out the same words and insert something different, and because the two propositions are entirely dissimilar. If, therefore, the former motion, put as a whole and negatived, would not preclude the latter, it certainly should not, if put in halves, and negatived.

Of Questions of Priority of Business.

The Senate and Assembly rules provide:

"All questions relating to the priority of business shall be decided without debate."— Senate rule 34.

"All questions relative to the priority of business, that is, the priority of one question or subject-matter over another, under the same order of business, shall be decided without debate."— Assembly rule 44.

It may be laid down as a general rule that any motion which proposes to take up a bill or other matter for consideration, in advance of its turn or out of its order, as established by the rules, or to put it in train to be disposed of sooner than it would be in regular course, raises a question of priority, which must be decided without debate.

So, questions of priority may arise, under the standing rules, during the progress of business and without motion, as whilst the House is engaged in the third reading of bills which have precedence among themselves.

But such questions are of easy solution, and as they require no debate, none is permitted.

To make a special order requires a two-thirds vote. The same to postpone and rescind. Roberts, p. 97.

Where there are two special orders for the same day, the first must be disposed of before the second is taken up. Warrington, p. 72.

On Closing Debate.

"When any bill, resolution or motion shall have been under consideration for six hours it shall be in order for any Senator to move to close debate, and the President shall recognize the Senator who wishes to make such motion. Such motion shall not be amendable or debatable and shall be immediately put, and if it shall receive the affirmative votes of a majority of the Senators present, the pending measure shall take precedence over all other business. The vote shall thereupon be taken upon such bill, motion or resolution, with such amendments as may be pending at the time of such motion according to the rules of the Senate, but without further debate, except that any Senator who may desire so to do shall be permitted to speak thereon not more than once and not exceeding one-half hour. After such motion to close debate has been made by any Senator no other motion shall be in order until such motion has been voted upon by the Senate. After the Senate shall have adopted the motion to close debate, as hereinbefore provided, no motion shall be in order but one motion to adjourn and a motion to commit. Should said motion to adjourn be carried, the measure under consideration shall be the pending question when the Senate shall again convene, and shall be taken up at the point where it was at the time of such adjournment. The motion to close debate may be ordered upon a single motion, a series of motions allowable under

the rules, or an amendment or amendments, or may be made to embrace all authorized motions or amendments and include the bill, resolution or motion to its passage or rejection All incidental questions of order, or motions pending at the time such motion is made to close debate, whether the same be on appeal or otherwise shall be decided without debate."— Senate rule 32.

The questions arising under these rules and the similar ones of the Senate of 1894–1895, are fully discussed in the Senate Journal of 1894, at page 196 *et seq.*, and Senate Journal of 1897, at pages 1325–1329.

Of the Previous Question.

There is no record of the previous question having been moved in the Senate, with the exception appearing on page 8 of the Senate Journal of 1892, at which time, no rules having been adopted, it was held by Lieutenant-Governor Sheehan that the Senate was operating under the rules of general parliamentary law, and that such motion could be entertained.

The previous question is peculiar to the Assembly. Rule 32. of the Senate provides for closure after six hours' debate.

The Assembly rule defines "the main question:"

"The main question shall be on the passage of the bill, resolution or other matter under consideration, and until it is decided, shall preclude all amendment or debate."— Assembly rule 33.

Originally, the previous question was introduced and used, almost exclusively to suppress questions which it might be desirable to get rid of for the time being.

Now, it is used as exclusively to force questions to a final vote, and to cut off amendment and debate.

To effect the original object of suppressing questions, it was necessary, of course, that the motion for the previous question should be negatived.

Of course, also, to effect the purpose for which it is now used, the motion for the previous question must be carried.

And to avoid the effect of a negative vote on the motion for the previous question, the Assembly rule provides that:

> "When, on taking the previous question, the House shall decide that the main question shall not now be put, the main question shall be considered as still remaining under debate."— Assembly rule 28.

The previous question being of the privileged class, having precedence over all others, except the motions to adjourn and for a call of the House, and being neither debatable nor amendable, whenever moved, puts an end to all debate and amendment, and if sustained by the House, compels a direct vote on the main question.

The rigidity of this rule is relaxed to this extent only: If an amendment or amendments be pending when the previous question is moved and carried (under a recent alteration of the rule), the main

question is deemed to include such pending amendment or amendments; and it or they must be put to a vote, in their order, if there be two, before the main question proper.

So, where a bill comes from the committee of the whole with amendments. If in such case the previous question, which is on agreeing to the bill as amended, be moved and sustained, such question is not to be put until all the amendments made by the committee of the whole and remaining unacted on at the time, have been put to a vote in their order.

"The main question shall be on the passage of the bill, resolution or other matter under consideration; but when amendments are pending, the question shall first be taken upon such amendments in their order."—Assembly rule 28.

But it will be perceived, that in the cases covered by this rule, amendments offered and negatived in committee of the whole, cannot be renewed in the House, under the operation of the previous question.

When a bill, having been engrossed and read a third time, is before the House for consideration, the main question is on its passage. Const., art. 3, § 15.

Of Amendments.

The rules governing amendments are few and simple, and chiefly based on parliamentary usage.

As an amendment takes the place of and must be decided before the main question, so an amendment to an amendment has priority over and must be decided before the primary amendment.

The only special rule on the subject, beyond those making an amendment a privileged question and providing that a motion to strike out and insert shall be indivisible, is this:

"When any bill requiring the concurrence of two-thirds of the Senators is under consideration, such con-

currence shall not be requisite, except on the question if its final passage." — Senate rule 20.

"It shall be in the power of either house to amend any amendment made by the other to any bill or resolution." — Joint rule 1.

The chief restraint on amendments is that they cannot be piled one on another beyond a certain degree; that is, whilst an amendment to an amendment is admissible, it is inadmissible to amend in the third degree.

Another is that they cannot be made to privileged questions of a certain grade; as, for instance, to the motion to adjourn, for the previous question, for a call of the House, or to lay on the table.

Aside from these checks — necessary in the one case to avoid confusion and embarrassment, and in the other, growing out of the nature of the proposition in hand — there is no limit to the range of amendment. Thus:

An amendment, though inconsistent with one already adopted, cannot be shut out for that reason, but must be put to a vote if insisted on. The inconsistency may be good ground for its rejection by the House, but is no ground for its suppression by the Chair.

This remark applies where the amendment proposes to reverse the proposition in hand; that is, to make it bear a sense directly at variance with the intention of the mover.

A few illustrations will serve to example the whole doctrine of amendment.

If it be proposed to amend by striking out certain words, it is admissible to move, by way of amendment to the amendment, that some of them be retained; or to move to amend in any other way the words proposed to be struck out — the rule being that the friends of a paragraph may make it as perfect as possible before the question is put on striking out.

So, if it be proposed to amend by inserting certain words, it is admissible to move, by way of amendment

to the amendment, to modify the words proposed to be inserted before the question on inserting is put.

If it be proposed to strike out and insert — whether the proposition be divided or not — the same rule applies. That is, both the matter proposed to be struck out, as well as that proposed to be inserted, are open to amendment before the question on striking out or inserting, or on striking out and inserting, is put to a vote.

The reason for all this is, obviously, that an affirmative vote on agreeing to or adopting precludes all subsequent modification of what has been thus agreed to or adopted, except under a reconsideration, and that a negative vote on striking out is equivalent to the affirmative of agreeing and has the same effect to preclude subsequent modifications of the matter proposed to be struck out but retained.

But a motion to strike out and insert if negatived — whether the motion be divided or not — does not preclude a motion to strike out the same matter and insert something different.

Nor, after a motion to strike out and insert, or to insert simply, has been carried, does it follow that the matter inserted may not be struck out with its coherencies. On the contrary, this is admissible, as it is the common case of striking out a paragraph, after it has been amended.

Substitute.

An amendment may be moved to an amendment, but it is not admitted in another degree. But it is a well-settled practice of the House that there may be pending, at the same time with such amendment to the amendment, an amendment in the nature of a substitute for part or the whole of the original text, and an amendment to that amendment. It was decided many years ago that if the motion to amend the original matter was *first* submitted, it was not then in order to submit an amendment in the nature

of a substitute, but it was subsequently decided otherwise, and the practice ever since has been in accordance with the latter decision. So now, notwithstanding the pendency of a motion to amend an amendment to the original matter, a motion to amend, in the nature of a substitute, and a motion to amend that amendment, may be received, but cannot be voted upon until the original matter is perfected.

Barclay's Digest, pp. 8 and 9.

Preamble.

When a proposition consists of several paragraphs, sections or resolutions, the natural order is to commence at the beginning, and proceed to amend it paragraph by paragraph in succession. When a latter part is amended, it is not in order to recur back and amend a former part. The proper course is for the presiding officer to cause to be read the proposition, pausing at the end of each paragraph, and inquiring if any amendment is proposed. Should none be offered, he will pass on to the next, and so on to the end. But there is an exception to this in the case of a preamble. As amendment of the resolution may require a corresponding alteration in the preamble; this latter is not to be considered and amended until the resolutions have been perfected. Mell, par. 119.

Of Things on the Table.

Matters laying on the table can only be called up when the class of business to which they belong is in order.

If laid on the table by a vote of the House, they cannot be lifted from it but by a vote of the House. If laid there, as, of course, under the rules, they can be called up, under their appropriate orders of business, by any member, as a matter of right.

But where a matter lies on the table, either by a vote or under the rules, it is deemed discourteous to call it up either in the absence of the mover, or against his wishes, if present, it being regarded as subject to his exclusive control, so far at least as to the time when it shall be considered, provided, always, the matter so tabled has reference rather to a subject of local or private concern, in special charge of the mover, than to those in which members from the State at large have a common interest, and provided it is not designed or calculated to delay final action on any measure or proposition before the House or to impede the progress of public business.

Table — Negative and Affirmative Vote to Lie on the.

A negative vote on a motion to lie on the table may be reconsidered.

If a motion to reconsider be laid on the table, the latter vote cannot be reconsidered.

Barclay's Digest, p. 134.

Of the Motion to Adjourn, and to Rise and Report Progress.

"The motion to adjourn or for a call of the Senate, or to lay on the table shall be decided without debate, and shall

always be in order, except as provided in rules 1, 32 and 47."— Senate rule 25.

Of course, the motion to adjourn, like all others, must be made in order. It cannot be made whilst the Chair is putting a question, or whilst a member has the floor, or after the previous question has been ordered to be now put, or whilst the Clerk is calling the roll on a division, or whilst the House is in committee of the whole.

With these qualifications of the word "always," the motion overrides every other question, and must be put, when made, without debate.

The motion to adjourn is not amendable; if carried the body stands adjourned either to the usual hour of meeting next day, or to some hour of the same day, or some future day, theretofore designated by one House or the other, or by joint resolution of the two Houses.

The motion to adjourn for a longer period than one day is debatable and amendable. Thus, if a motion is made to adjourn from Friday until Monday evening, a motion to amend, naming any other time, would be in order.

The motion, in committee of the whole, that the committee rise and report progress, is always in order, subject only to the reservations, so far as they are applicable, mentioned in reference to the motion to adjourn.

"A motion that the committee rise and report progress on any bill shall always be in order, and shall be decided without debate."— Senate rule 15.

Of Adjournment and Recess.

Strictly, an adjournment is the closing of a session for the day, to be resumed another day; on which day the regular routine of business is commenced, *de novo*, except when a special order supersedes it.

On the contrary, a recess is a suspension of business from one hour of a day to another hour of the same day, at which hour business is taken up at the point where it was left, unless a special order takes its place.

But this distinction is not observed always. For instance, where afternoon, or afternoon and evening, sessions have been ordered, a motion to adjourn made during the morning or afternoon session, and carried, is generally construed to mean a recess to the fixed hour of meeting in the afternoon or evening, and is so announced.

Usually the hour for taking a recess in the morning or afternoon is previously fixed, and at this hour, without motion or vote, the Chair announces the recess, unless the Clerk is calling the roll on a division at the instant, or the House has ordered the main question.

The Constitution limits the duration of an adjournment of either House.

"Neither House shall, without the consent of the other, adjourn for more than two days."— Art. 3, § 11.

But this limitation was formerly interpreted not to include Sunday, and that either House might ad-

journ from Friday to Tuesday of the succeeding week; or from Thursday to Monday ensuing. But it has now been established by practice, usage and rulings of the presiding officers, that the limitation of the Constitution prohibits an adjournment of one House from Thursday till Monday, or from Friday till Tuesday, without the consent of the other.

Postponement.

To a time definite.— On a motion to postpone to a time definite, it is not in order to speak to the merits of the question thus proposed to be postponed. It will not be out of order, though, to speak strictly to the proposition to postpone, and to show why one time is preferred to another. The Chair should hold speakers rigidly to these points. In Congress, *all* debate is interdicted. Mell, par. 93.

Of the Absolute Rights of Members.

"The only case where a member has a right to insist on anything is where he calls for the execution of a subsisting order of the House. Here, there having been already a resolution, any member has a right to insist that the Speaker, or any other whose duty it is, shall carry it into execution, and no debate or delay can be had upon it."— Hatsell.

Thus, the two Houses having agreed to adjourn *sine die* at a particular hour of a certain day, any member has the right, the time having arrived, to insist on such adjournment, and no further business can be done if the point be insisted on.

So, when a bill or other matter has been made a special order for a certain day and hour, or when the House has ordered a recess from one hour to another of the same day, or that the House shall adjourn at a certain hour each day to the next, any member has a right to insist, the time thus specified having arrived, that the order shall be executed, and no "debate or delay can be had on it."

And for the like reason:

"Whenever, during business, it is observed that a quorum is not present, any member may call for the House to be counted, and being found deficient, business is suspended."—Hatsell.

Of the Reading of Papers.

The parliamentary rule is, when papers are laid before the House, or referred to a committee, that every member has a right to have them once read at the table before he can be compelled to vote on them, that is, when the reading is clearly desired in good faith for information, and not for delay, in which case the Chair directs the reading, without putting a question, if no one objects. But, if objection be made, a question must be put, and the will of the House controls.

So, of papers not before the House or in its possession, a member has not the right to lay such papers on the table and have them read on his suggestion that they contain matter infringing on the privileges of the House.

Nor has a member a right to read a paper in his place, if it be objected to, without leave of the House; nor has he a right, without such leave, even to read his own speech committed to writing. But this rule is seldom enforced with vigor, except where an intentional or gross abuse of the time and patience of the House is obviously intended.

The Senate rule does not change the parliamentary rule, except in the case of petitions, the reading of which any member has the right to compel, even against the will of the Senate.

In the Assembly the practice is in conformity to the parliamentary rule. When the reading of a petition or memorial is called for, the Speaker directs the Clerk to read it, unless objections be made, in which case the House determines the matter. Not unfrequently the reading, after being commenced, is interrupted by a motion to suspend or dispense with the further reading, which is always entertained and

put to a vote, as in the Senate, when the reading of papers, other than petitions, is called for and objected to.

Of the Privileges of Members and Officers of Either House.

The Legislative Law (chap. 37 of the Laws of 1909), and the Constitution (art. 3, § 12), define the privileges of members and officers of the Legislature. They are briefly these:

The exemption of a member from arrest, on civil process, during his attendance at the session of the House to which he belongs, and for a period of fourteen days previous to any such session, and also whilst going to or returning from such session, provided the time of such going or returning does not exceed fourteen days.

But he is not exempt from arrest on process issued in any suit brought against him for any forfeiture, misdemeanor or breach of trust, in any office or place of public trust held by him.

Such exemption from arrest extends through any recess of the Legislature, not exceeding fourteen days in duration; and also during his absence on leave of the House to which he belongs.

It is also the privilege of a member of the Legislature that he is not to be questioned in any other place for any speech or debate in either House of the Legislature.

No officer of either House, whilst in actual attendance on the House, is liable to arrest on civil process.

Of the Power to Punish Members and Others.

By virtue of the Legislative Law of 1909, each House has the power to expel any of its members, and to punish its members and officers for disorderly behavior, by imprisonment. But no member is to be expelled until a committee shall have inquired into and reported on the facts alleged as ground for expulsion.

By the same statute, each House has power also to punish as a contempt, and by imprisonment, persons other than members, guilty of one or more of the following offenses:

That of arresting a member or officer of the House in violation of his privilege from arrest.

That of disorderly conduct in the immediate view and presence of the House, and directly tending to interrupt its proceedings.

That of publishing any false and malicious report of the proceedings of the House, or of the conduct of a member in his legislative capacity.

That of refusing to attend or be examined as a witness, either before the House or a committee, or before any person authorized by the House or by a committee, to take testimony in legislative proceedings.

That of giving or offering a bribe to a member, or of attempting by menace or any other corrupt means or device, directly or indirectly to control or influence a member in giving his vote, or to prevent him from giving the same.

But in all cases where either House shall punish any of its members or officers or any other person by imprisonment, such imprisonment shall not extend beyond the same session of the Legislature.

Beyond the offenses enumerated in the Revised Statutes, there are others, which either House has power to punish at discretion; such power being essential to preserve its existence and to vindicate its dignity.

Thus, the absence of members from the stated sessions of the House, without leave and without reasonable excuse, is always regarded and treated, if not as a contempt, at least as an offense punishable by fine, reprimand or other mark of displeasure or censure.

So, also, in the presentation of a petition, memorial or other paper, insulting in tenor or language, or bearing false or fictitious signatures.

So, also, is the refusal of a member to vote when required by the rules, under a proper administration thereof, and generally.

So is any act of willful defiance of the rightful authority of the House, or its lawful mandates, or designed to wound its character or bring it and its proceedings into popular odium and contempt.

Of a Call of the House.

"In case a less number than a quorum of the Senate shall convene those present are authorized to send the Sergeant-at-Arms or any other person for the absent Senators."— Subdivision 6 of Senate rule 6.

"For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to rule 32, unless it shall appear upon an actual count by the President that a quorum is not present."—Senate rule 47.

In all cases of the absence of members during the sessions of the House, the members present may take such measures as they shall deem necessary to secure their presence, and in addition to suspending them from the service of the House for a given period, may inflict such censure or pecuniary penalty as they may deem just on those who, on being called for that purpose, shall render not sufficient excuse for their absence. Assembly Rule 33.

For the purpose of securing the attendance of members, a call of the House may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of a bill has been completed. Assembly Rule 34.

If an absentee, after being summoned by the Sergeant-at-Arms, neglects or refuses to attend, or treats the summons with disrespect to the House, or defiance of its authority, the fact being reported by that officer to the House, furnishes the ground for a resort to compulsory process to enforce his attendance.

Proceedings under a call of the House may be suspended wholly or in part. Thus:

Where a quorum has been secured, but there are

still absentees without leave who have evaded or have not been found by the Sergeant-at-Arms, the suspension of the call may be, and sometimes is, qualified, so far as to provide that such absentees, when they appear, shall render their excuses, if any they have, at the bar of the House and abide the judgment of the House.

Calls of the House are seldom made except in the absence of a quorum. But they are sometimes made pursuant to notice as to time with a view to secure a full attendance on occasions of special importance.

The power of a legislative body to compel the attendance of all its members, not disabled by sickness or out on leave, is as undoubted as its power to enforce the attendance of a quorum merely.

For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 32, unless it shall appear upon an actual count by the President that a quorum is not present.

For the purpose of securing the attendance of members, a call of the House may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of a bill has been completed.

Assembly Rule, No. 34.

The uniform practice of the Legislature has recognized the right at any time, during a "call of the House," to move to adjourn, or to suspend further proceedings under the call.

Of the Veto and Proceedings Thereon.

The Constitution (Art. IV, § 9) prescribes the mode of procedure when a bill comes back to the originating House from the Governor without his signature but with his objections.

The veto message is to be read and entered at large on the Journal.

The vetoed bill is to be again considered at such time as the House may direct and again put to a vote.

The point has been raised on the reception of a veto message whether the question on the passage of the vetoed bill notwithstanding the Governor's objections, should not be commenced immediately upon the reading of such message, but the practice has been uniformly, except in very plain cases, to postpone final action on the vetoed bill until such message has been printed to the end that the objections of the Governor may be deliberately examined and canvassed.

To pass a vetoed bill, notwithstanding the objections of the Governor, the Constitution requires the vote of two-thirds of the members elected to each House.

If a vetoed bill be repassed by the requisite majority of the originating House it is sent to the other with

the veto message, and there it is again to be considered and again passed upon; and if the vote there be favorable the bill is a law.

If the bill fail in the originating House for want of the requisite vote there is an end of it.

The Constitution gives the Governor the power to veto one or more items in all bills appropriating money, while approving other portions of the same bill. This only applies to bills appropriating money. The veto of items in bills of that character takes the same course as that of vetoes of entire bills. The Legislature has the same right to pass the items, notwithstanding the objections of the Governor, as it has over other vetoed bills. A vote of two-thirds of all the members elected in each House is required to repass the vetoed items.

The form of proceedings in each House is the same as when an entire bill is vetoed.

Of Admissions to the Floor.

The rules of the Senate and Assembly on this subject are:

"Persons not members of the Senate, or officers or employes thereof, shall be admitted to the floor of the Senate only as follows: 1. The Governor, his Secretary and Messenger. 2. The members and Clerk of the Assembly, and Clerks and Messengers of the Assembly in the exercise of an official duty directly connected with the business of the Senate. 3. The elected State officers, heads of departments and their deputies. 4. Reporters of the Senate and of

the Assembly designated under the rules unless a designation theretofore given them has been revoked. 5. Ladies, and members of a Senator's family, or of the family of the President of the Senate, on the card of a Senator, or of the President of the Senate. 6. Former members of the Senate. 7. Any person not hereinbefore named may be admitted to the parlor of the Senate. 8. During the sessions of the Senate, no person other than a Senator shall occupy the chair of a Senator.—Senate rule 48.

"The following classes of persons shall be entitled to admission to the floor of the House during the session thereof, viz.: 1. The Governor and Lieutenant-Governor. 2. The members of the Senate. 3. The State officers and deputies. 4. The Regents of the University. 5. The Capitol Commissioners. 6. Persons in the exercise of an official duty, directly connected with the business of the House. 7. The reporters for the press, as provided by subdivision 7 of rule 2. (See subdivision 5 of rule 2.) 8. Ex-Speakers of the Assembly. No other person shall be admitted to the floor during the session, except upon the permission of the Speaker, or by a vote of the House; and persons so admitted shall be allowed to occupy places only in the seats in the rear of the Assembly Chamber. All permits granted by the Speaker may be revoked by him at pleasure, or upon the order of the House."—Assembly rule 30.

Of Secret and Executive Sessions.

The Senate rules on this subject are as follows:

"On motion to close the doors of the Senate, on the discussion of business which, in the opinion of any Senator, may require secrecy, and during the consideration of all business in executive session, the

President shall direct all persons except the Senators and Clerk of the Senate, his Messenger, the Journal Clerk and Sergeant-at-Arms of the Senate, to withdraw; and, during the discussion of said motion, the doors shall remain shut; and every Senator and officer of the Senate shall keep secret all such matters, proceedings and things which shall transpire while doors remain closed."—Senate rule 38.

"The proceedings of the Senate upon executive business shall be kept in a Journal separate from its proceedings upon legislative business."—Senate rule 39.

"The Senate shall go into consideration of executive business at such times as may be ordered by a vote of the majority of the Senators present. All nominations sent by the Governor for the appointment of any officer (except notaries public) shall be referred, unless the Senate otherwise orders, to a standing committee of the Senate. Nominations of persons for the office of notary public shall be referred to the Senator from the district in which the nominee resides, except that when the nominee resides in the city and county of New York, the reference shall be to the Senators from that city and county; and when the nominee resides in the county of Kings, the reference shall be to the Senators from that county."—Senate rule 40.

Of the Reconsideration of Votes.

The rules of the two Houses regulating the reconsideration of votes are these:

"When a question has been once put and decided, it shall be in order for any Senator to move for the reconsideration thereof; but no motion for the reconsideration of any vote shall be in order after the bill, resolution, message, report, amendment or motion upon which the vote was taken, shall have gone out of the possession of the Senate, and before the first day of March no bill or resolution shall be sent from the Senate on the day of its passage; nor shall any motion for reconsideration be in order unless made on the same day on which the vote was taken, or within the next three days of the actual session of the Senate thereafter; nor shall any question be reconsidered more than once; but when a bill or resolution shall have been recalled from the Governor or from the Assembly, a motion for reconsideration may be made at any time thereafter while the same is in the possession of the Senate, and all resolutions recalling a bill or resolution from the Governor or Assembly shall be regarded as privileged. No vote shall be reconsidered upon either of the following motions: To adjourn, to lay on the table."—Senate rule 30.

"A motion to reconsider any vote must be made on the same day on which the vote proposed to be reconsidered was taken, or on the legislative day next succeeding, and, except in the case of a vote on the final passage of a bill, by a member who voted in

the majority. Such motion may be made under any order of business, which shall be considered only under the order of business in which the vote proposed to be reconsidered occurred. The motion to reconsider the vote on the final passage of any bill shall be privileged to any member, but no motion for the reconsideration of any vote shall be in order after a bill, resolution, message, report, amendment or motion upon which the vote was taken shall have gone out of the possession of the House, unless subsequently recalled by a vote of the House, and in possession of the Clerk."—Assembly rule 25.

"When a motion for reconsideration is decided, that decision shall not be reconsidered, and no question shall be twice reconsidered; nor shall any vote be reconsidered upon either of the following motions: To adjourn. To lay on the table. To take from the table; or for the previous question."—Assembly rule 26.

The rules of both Houses agree in forbidding the renewal of a motion to reconsider once put and lost.

Under the Senate rule any Senator may move a reconsideration. The Assembly rule, under recent modifications, makes a motion to reconsider the vote on the final passage of any bill a privileged question to any member; but in all other cases the motion to reconsider is privileged only to those who voted in the majority. In order that no member may lose his right to reconsider by the failure on the proper day to reach the order of business under which the vote proposed to be reconsidered occurred, it is now

provided that the motion to reconsider may be made under any other order of business, but must wait for consideration until the proper order be reached, when it may be called up for reconsideration and final action.

So, if a resolution, or any proposition other than a bill, be adopted or rejected, the rule in regard to the source of a motion to reconsider applies in its literal sense. They differ on the following point:

The Senate rule permits a motion for reconsideration to be made at any time within three days, while in the Assembly the motion to reconsider must be made on the same or the following legislative day.

The Senate rules provide that a majority of all the Senators elected shall be requisite to reconsider the vote on the final passage of a bill appropriating public moneys or property, or creating, continuing, altering or renewing any body politic or corporate, but all other bills which may have been lost may be reconsidered by a majority of the Senators present and voting.

Whether the bill proposed to be reconsidered passed or was rejected, the Assembly rule requires the same vote to reconsider that the Constitution does to pass it.

The practice of the Senate is generally the same; and is based on grounds obvious enough, when the proposition is to undo what has once been constitutionally done; and, if economy of time be taken into account, quite as clear when the case is reversed.

Of the Printing of Bills, Documents, etc.

The State Printing Law prescribes what shall be printed as of course, and what may be, by order of either House and of the two Houses, etc., etc., and the

distribution thereof. The provisions of the State Printing Law relative to printing are fully set forth *ante*.

"All resolutions for printing extra copies of documents shall be referred to the Committee on Printing, who shall report on each resolution within seven days after such reference."—Assembly rule 16.

Of Proceedings in Joint Meetings of the Two Houses.

Joint meetings of the two Houses are always held in the Assembly Chamber.

They are held for the purpose of comparing nominations for offices which are to be filled by the Legislature, each House acting independently of the other in making such nominations.

The statute regulates the mode of proceeding in such cases, and prescribes, also, the second Tuesday after the meeting and organization of the Legislature as the day on which the election of United States Senator or Senators shall take place.

Chapter twenty-one of the Laws of 1909 provides for the election of a Commissioner of Education in the same manner as regents are now elected. Section 1081 of the Education Law provides that regents shall be elected in the same manner as United States Senators, except that the election takes place on or before the fourteenth day of February in each year.

The two Houses, by joint resolution, agree in advance upon the hour of the statutory day when they will proceed, respectively, to nominate United States Senators, or upon the day and hour when they will proceed to nominate other officers.

Upon the day thus prescribed or agreed on, after the interchange of messages announcing the readiness of

each House to compare nominations, the Senate, preceded by its officers, enters the Assembly Chamber, the members of the Assembly rising to receive them.

The Lieutenant-Governor or temporary President of the Senate presides over these joint meetings, taking his seat on the right of the Speaker.

After announcing the purpose for which the two Houses have met, he directs the Clerk of the Senate to read from its Journal the record of its proceedings and the result.

This being done, the Speaker directs the Clerk of the Assembly to read from its Journal the record of its proceedings and the result.

If, on thus comparing the nominations made by the two Houses, they are found to agree, the Lieutenant-Governor announces the election of the person on whom the two Houses have united. If they are found to disagree, the matter is settled by joint ballot, the Lieutenant-Governor naming two tellers on the part of the Senate, and the Speaker two on the part of the Assembly.

An election having been thus made, the Lieutenant-Governor announces the result, and the business of the joint meeting being accomplished, declares the meeting dissolved. The Senate then retires.

The Speaker, upon the retirement of the Senate, announces the result of the joint meeting. The Lieutenant-Governor, on resuming the chair in the Senate, also announces such result.

"Whenever there shall be an election of officers by the joint action of the two Houses, the result shall be certified by the President of the Senate and Speaker of

the Assembly, and shall be reported by the presiding officer of each House to their respective Houses, and be entered on the Journals of each, and shall be communicated to such official as the law may require by the Clerks of the two Houses." — Joint rule 6.

The only record of the result of a joint meeting of the two Houses, for the election of officers, is to be found on the separate Journals of the two Houses.

These entries consist of a brief statement of the fact that the two Houses, having met, pursuant to joint resolution and the statute, to compare nominations for such and such an office, they were found to agree to such and such a name, or to disagree, as the case may be, and that the Lieutenant-Governor thereupon announced the election of the person upon whom the two Houses had concurred; or, in the event of a disagreement between the two, that the joint meeting proceeded to ballot, and that such and such a result was announced by the Lieutenant-Governor in joint meeting; and that such announcement was repeated by the Speaker, after the Senate had retired, or by the President of the Senate, on resuming his seat in the Senate Chamber.

But it may be remarked that, though the two Houses may agree, by joint resolution, to proceed at a specified time to nominate the officer or officers to be elected by the Legislature, it does not always happen that the two Houses get together to compare nominations, and because one House or the other may not be able to effect a nomination by the requisite majority of all the members present.

In such case, the election goes over for that day, and until another day is agreed on for another trial.

But elections of United States Senators are regu-

lated by act of Congress, and the day prescribed for nomination in each House, and also for the two Houses to meet in joint convention. This law prevents either House, from any caprice, defeating a joint meeting for the election of Senator, but makes such joint session obligatory upon both Houses.

Election of United States Senators.

The following law has been enacted by Congress in reference to the time and mode of choosing United States Senators:

CHAPTER 245.

An Act to regulate the times and manner of holding elections for Senators in Congress.

Be it enacted by the Senate and House of Representatives of the United States of America, in Congress assembled: That the Legislature of each State which shall be chosen next preceding the expiration of the time for which any Senator was elected to represent said State in Congress, shall on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator in Congress, in the place of such Senator so going out of office, in the following manner. Each House shall openly, by a *viva voce* vote of each member present, name one person for Senator in Congress from said State, and the name of the person so voted for, who shall have a majority of the whole number of votes cast in each House shall be entered on the Journal of each House by the Clerk or Secretary thereof; but if either House

shall fail to give such majority to any person on said day, that fact shall be entered on the Journal. At twelve o'clock, meridian, of the day following that on which the proceedings are required to take place, as aforesaid, the members of the two Houses shall convene in joint assembly and the Journal of each House shall then be read, and if the same person shall have received a majority of all the votes in each House, such person shall be declared duly elected Senator to represent said State in the Congress of the United States; but if the same person shall not have received a majority of the votes in each House, or if either House shall have failed to take the proceedings as required by this act, the joint assembly shall then proceed to choose, by a *viva voce* vote of each member present, a person for the purpose aforesaid, and the person having a majority of all the votes of said joint assembly, a majority of all the members elected to both Houses being present and voting, shall be declared duly elected; and in case no person shall receive such majority on the first day, the joint assembly shall meet at twelve o'clock, meridian, of each succeeding day during the session of the Legislature, and take at least one vote until a Senator shall be elected.

§ 2. And be it further enacted, That whenever, on the meeting of the Legislature of any State, a vacancy shall exist in the representation of such State in the Senate of the United States, said Legislature shall proceed, on the second Tuesday after the commencement and organization of the session, to elect

a person to fill such vacancy, in the manner hereinbefore provided for the election of a Senator for a full term; and if a vacancy shall happen during the session of the Legislature, then on the second Tuesday after the Legislature shall have been organized and shall have notice of such vacancy.

§ 3. And be it further enacted, That it shall be the duty of the Governor of the State from which any Senator shall have been chosen, as aforesaid, to certify his election, under the seal of the State, to the President of the Senate of the United States, which certificate shall be countersigned by the Secretary of State of the State.

Approved July 25, 1866.

Under the law of Congress, as above, the Legislature last elected preceding the expiration of the term of a Senator in Congress, shall, on the second Tuesday after the meeting and organization thereof, proceed to elect a Senator. On that day each House acts separately. In the case of a failure of either House to effect a nomination by the requisite majority of all members present, it can continue to ballot until a nomination is made, or abandon the effort in the first ballot.

But the failure of either House to make a nomination does not delay or put off the joint session to compare the work of the two Houses. On this point the law of Congress is imperative. On the following day (or second Wednesday after the organization), at twelve o'clock, meridian, the two Houses must convene in joint assembly, and the action of each

House the day previous is then and there read to the joint convention. If the two Houses fail to agree in their nominations, the joint assembly shall proceed to choose a Senator by *viva voce* vote. In the event of a failure to elect on the first day, the two Houses must meet in joint session on each succeeding day of the session, and take at least one vote on each day until an election is accomplished.

Until an election is secured, the final adjournment of the Legislature is the only way that the daily joint session can be arrested.

The form of proceedings in joint session will be found under the head of proceedings in joint meeting of the two Houses.

On Joint Committees of Conference and Amendments Between the Two Houses.

The mode of conducting conferences between the two Houses on all matters of difference is prescribed by the joint rules as follows:

In every case of difference between the two houses, upon any subject of legislation, either house may request a conference, and appoint a committee for that purpose, and the other shall also appoint a committee to confer. The committee shall meet at such hour and place as shall be appointed by the chairman of the committee on the part of the house requesting such conference. The committee shall report in writing, and shall be authorized to report such modifications or amendments as they think advisable. But no committee on conference shall consider or report on any matter except those directly at issue between the two houses. The papers shall be left with the conferees of the house assenting to such conference, and they shall present the report of the committee to their house. When such house shall have acted thereon, it shall transmit the same, and the papers relating thereto, to the other, with a message certifying its action thereon. Every report of a committee of conference shall be read through, in each house, before a vote is taken on the same.—Joint rule 2.

It shall be in order for either house to recede from any subject matter of difference existing between the two houses at any time previous to conference, whether the papers on which such difference arose are before the house receding, formally or informally; and on such vote to recede the same number shall be required to constitute a quorum to act thereon, and to assent to such receding, as was required on the original question out of which the difference arose.—Joint rule 3.

In case of a failure of the conferees to agree, a report of such disagreement may be made and a further conference may be had, either by the same or new committees appointed for such purpose. After each house shall have refused conference and shall have adhered to their disagreement, the bill which is the subject of difference shall be deemed lost, and shall not be again revived during the same session in either house.—Joint rule 4.

All joint committees of the two houses, and all committees of conference, shall consist of three Senators and five members of the Assembly, unless otherwise specially ordered by concurrent resolution, and in voting, all questions shall be determined by the vote of the committee of each house taken separately.—Joint rule 5.

A proposition for a conference must come from the House having possession of the papers. Thus:

A bill passed by one House is sent to the other for concurrence. It comes back amended. The originating House non-concur in the amendment. It is then competent for the originating House, before parting with the papers, to request a conference, a difference having arisen, and being matter of record.

It is also competent for the originating House to simply non-concur and allow the bill and amendments to be returned to the other House, giving the latter an opportunity to recede from its amendments.

If the receiving House insist on its amendment, it can propose a conference, or it may first give the originating House an opportunity to recede from its vote of non-concurrence.

In this event, if the originating House insist on its vote of non-concurrence, it may propose a conference. If not, and if the receiving House adhere to its amendment, it only remains for the originating House to recede or adhere also. If it adhered to its vote of non-concurrence, the bill is deemed to be lost, and cannot be revived during the same session.

Either House in such a case, as has been stated, may adhere without going through the intermediate process of insisting; but such a course is deemed disrespectful to the other.

The process of insisting may be repeated as long as the two Houses choose to keep the question open; but when one House adheres, the other must recede or adhere.

It is the usual, and almost universal practice, when the originating House non-concurs in the amendments of the other House, to at once appoint a committee of conference and request a like committee on the part of the House which has amended the bill. The instances are very rare in which amendments are non-concurred in and the bill returned

without a request for a committee of conference accompanying it.

Throughout these proceedings, whilst either House may amend amendments from the other, neither can modify what it has adopted and sent to the other, but is committed to it until the action of a committee of conference opens the matter anew by a compromise.

But in amending amendments sent by one House to the other, the same rule applies which governs amendments in each; that is, it is inadmissible to go beyond an amendment to an amendment, the proposition of the amending House being regarded as the starting point in the way of amendment.

So, also, a motion to amend an amendment from either House takes precedence over the question of agreeing to, or concurring in such amendments.

Where a committee of conference fails to agree, the bill which is the subject of difference is disposed of, unless another conference is proposed and acceded to, which is not uncommon.

But, if a committee of conference agree to compromise, such compromise must be agreed to by the requisite vote in both Houses, or the bill is lost.

The report of a conference committee must be in writing and signed by those agreeing thereto, and must have the signatures of a majority of the representatives of each House. The report should be first made to and acted on by the House assenting to the conference. If agreed to, it is then passed upon by the other House. If not agreed to by either

House, a further conference may be had, or either House may recede from its position and agree with the other. No matters other than those of disagreement directly at issue between the two Houses can be considered, and the report of the committee cannot be amended. It must be accepted or rejected as it stands. A conference report has precedence over any other business, and in the Congress of the United States is privileged even against a motion to adjourn, and may be read at any time except when the Journal is being read, the roll called or the House dividing.

Miscellaneous Provisions — Senate Rules.

"None but the President, Senators and Clerks shall be allowed to take books belonging to the Senate Library; and on taking books each of the persons above mentioned shall furnish to the Librarian a list of those taken, and his name, and shall be responsible for them; and it shall be the duty of the Librarian to have a book in which he shall enter the delivery of the books so taken and their return; and it shall be his duty to see that the books in the Library are kept in order and in their place at the opening of each morning session."— Senate rule 41.

"It shall be the duty of the Superintendent of Documents and his assistant to have the documents and bills promptly placed upon the files of the President and Senators in the order of their numbers, and it shall be the duty of the Postmaster to see that the mails are punctually delivered."— Senate rule 42.

"Whenever a claim is referred to a committee, and the committee reports that the claim ought not to be allowed, and the report be adopted by the Senate, it shall not be in order to move to take the papers from the files for the purpose of referring them to a subsequent session, unless the claimants shall present a memorial for that purpose, stating in what manner the committee have erred in the report, or that new evidence had been discovered since the report, and setting forth the same in the memorial."—Senate rule 45.

"The Sergeant-at-Arms, except when absent in the discharge of his duties, shall be in constant attendance upon the sessions of the Senate, and, under the direction of the President, aid in enforcing order on the floor of the Senate, in the lobbies and in the rooms adjoining to the Senate Chamber, and also to see that no person remains on the floor unless entitled to the privileges of the same."—Senate rule 5.

"In all cases of the absence of members during the sessions of the Senate, the members present shall take such measures as they shall deem necessary to secure their presence, and in addition to suspension for a given period, may inflict such censure or penalty as they may deem just on those who shall not render sufficient excuse for their absence."—Subdivision 7 of Senate rule 6.

"All resolutions calling for the expenditure of moneys must be decided by a majority vote of all the members elected to the Senate upon a call of the roll."—Senate rule 46.

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APPENDIX

TO THE

CLERK'S MANUAL

OF

RULES, FORMS AND LAWS

FOR THE

REGULATION OF BUSINESS

IN THE

SENATE AND ASSEMBLY OF STATE OF NEW YORK.

APPENDIX.

APPENDIX.

ADJOURN.— It has been decided and acted upon that the motion "to fix the *day* to which the house shall adjourn" takes precedence of a motion "to adjourn."
Barclay, p. 5.

A motion "to fix the *hour* to which the house shall adjourn" does not take precedence of a motion to adjourn, and can only be made when resolutions are in order. Barclay, p. 6.

A motion to adjourn cannot be received after another question is actually put, and while the house is actually engaged in voting. Barclay, p. 6.

A motion to adjourn cannot be received after a bill has been read through the third time, but the vote on final passage must be taken.

— *To fix time to which to.*—If it is desired to have an adjourned meeting of the assembly, it is best some time before its close to move, "That when this house adjourns, it adjourns to meet at such a time," specifying the time. This motion can be amended by altering the time, but if made when another question is before the assembly, neither the motion nor the amendment can be debated. If made when no other business is before the assembly, it stands as any other main question, and can be debated. This motion can be made even while the assembly is voting on the motion to adjourn, but not when another member has the floor. Roberts, p. 169.

— *To a particular time.*— If previously it had been decided when they adjourned to adjourn to a particular time, then the chair states that the assembly stands

adjourned to that time. If the motion to adjourn is qualified by specifying the time, as "to adjourn to to-morrow evening," it cannot be made when any other question is before the assembly; like any other main motion, it can then be amended and debated.

Roberts, p. 170.

A motion simply to adjourn is in no instance debatable; but if, in order, it is moved to adjourn to a particular day, or for a particular time, the proposition will admit of debate. In this form it cannot be moved when anything else is pending; for, in this form, it is itself a principal proposition, and not a privileged question.

Mell, par. 167.

A motion to adjourn cannot take a member from the floor, cannot interrupt the verification of a vote, and cannot be entertained while an assembly is dividing.

Reed's Rules, sec. 169.

A motion to adjourn *sine die* is subject to a motion to commit, and is debatable. Legislative Manual, p. 262.

AMENDMENT.— An amendment, though inconsistent with one already adopted, cannot be shut out for that reason, but must be put to a vote if insisted on. The inconsistency may be good ground for its rejection by the house, but is no ground for its suppression by the chair.

Croswell, p. 46.

The friends of a bill or section must have the privilege of selecting the most advantageous form for it before it is liable to be suppressed by a substitute.

Warrington, p. 68.
Croswell, p. 46.

— *Substitute.*— An amendment may be moved to an amendment, but it is not admitted in another degree. But it is a well-settled practice of the house that there

may be pending, at the same time with such amendment to the amendment, an amendment in the nature of a substitute for part or the whole of the original text, and an amendment to that amendment. It was decided many years ago that if the motion to amend the original matter was *first* submitted, it was not then in order to submit an amendment in the nature of a substitute, but it was subsequently decided otherwise, and the practice ever since has been in accordance with the latter decision. So, now, notwithstanding the pendency of a motion to amend an amendment to the original matter, a motion to amend, in the nature of a substitute, and a motion to amend that amendment, may be received, but cannot be voted upon until the original matter is perfected.

Barclay's Digest, pp. 8 and 9.

— *Preamble.*— When a proposition consists of several paragraphs, sections or resolutions, the natural order is to commence at the beginning, and proceed to amend it paragraph by paragraph in succession. When a latter part is amended, it is not in order to recur back and amend a former part. The proper course is for the presiding officer to cause to be read the proposition, pausing at the end of each paragraph, and inquiring if any amendment is proposed. Should none be offered, he will pass on to the next, and so on to the end. But there is an exception to this in the case of a preamble. As amendment of the resolution may require a corresponding alteration in the preamble; this latter is not to be considered and amended until the resolutions have been perfected.

Mell, par. 119.

APPEAL.— *from decision of the chair:*

Cannot be amended.

Cannot be debated when it relates to indecorum.

Or to transgressions of the rules of speaking.

Or to the propriety of business.

Or if it is made while the previous question is pending.

Opens to debate the grounds of the decision of the presiding officer. Croswell's Manual, p. 30.
Roberts on Rules of Order, p. 38.

May be laid on the table. If carried the decision of the chair stands. Roberts, pp. 41–42.
Barclay's Digest, p. 13.

Motion to table an appeal from a decision of the chair, if carried, does not carry with it the subject-matter; it carries only the appeal.
Speaker Malby, Assembly Journal, 1894, p. 2678.

Vote on, may be reconsidered, but vote on motion to table an appeal cannot be reconsidered.
Roberts, pp. 39 and 40.
Cushing, par. 1466.
Reed's Rules, p. 150.

Is too late if debate or other business intervenes.
Cushing, par. 1465.

If a new point of order is raised, when an appeal is pending, no second appeal is in order, nor does the withdrawal of the first appeal change the case.
Cushing, par. 1470.

May be withdrawn at the pleasure of the mover, and renewed by the same person or another, and may be debated itself, but not the question out of which it arose.
Main question may be withdrawn before it is decided or amended, and then the appeal falls. If the appeal is laid on the table, the main question is still before the house. Cushing, par. 1467.

Adjournment does not suppress an.
Cushing, par. 1467.

Is debatable, though the question giving rise to it may be undebatable. Cushing, par. 1466.

If there is a tie on an appeal, the decision of the chair is sustained. Roberts, pp. 39, 94.

In all cases the chair may decide the question, and if he pleases may sustain his own decision by means of his casting or other vote. Cushing, par. 1471.

Is not debatable (1) when the subject relates to transgressions of the rules of speaking, or to some indecorum, or to the priority of business; (2) when the previous question was pending at the time the question of order was raised. Roberts, p. 167.

On an appeal from his decisions the presiding officer can participate in the debate without vacating the chair. It is out of order for anyone to speak on the decision of a point of order, unless an appeal has been taken from such decision. But the presiding officer may accompany his ruling, if so disposed, with a concise statement of his reasons. Mell, par. 155.

Where an appeal has been decided, and by virtue of such decision a bill taken up and passed, it is too late to move a reconsideration of the vote on the appeal.
Barclay's Digest, p. 14. See page 512.

BILLS.— *Third reading of.*— If a bill is laid on the table on its third reading it retains its place in the order of third reading of bills, and if taken from the table by motion, it comes immediately again before the house on its third reading.

If a bill has been read through on its third reading, no delay of any kind is in order; the Constitution provides that the vote in such case, on its final passage, must be taken. Const., art. 3, sec. 15.

BLANKS.— *Filling of.*— When propositions are introduced containing blanks to be filled, either with times

or numbers, these must be filed before any motion is made to amend. To do this, the chair will entertain any number of propositions of time or number, and put the propositions to the house, beginning with the longest time or largest number, and continue to submit them to vote in succession, until a majority is obtained.

Mell, par. 140.

CALL OF THE HOUSE.—A call of the house may be moved before the journal is read, if no quorum is present. Barclay's Digest, p. 37.

No business is in order until after the journal has been read.

Lt.-Gov. Jones, Senate Journal, 1889, p. 223.

It is not in order for the house to take a recess during a call of the house. [Indeed, no motion, except to adjourn or with reference to the call, is ever entertained during a call.]

[By an adjournment pending a call, all proceedings in the call are terminated; but where the house has previously passed an order specially directing otherwise, such special direction should doubtless be executed.] Barclay's Digest, p. 38.

See journal of H. R., 2, 27, p. 672.

A motion for a call of the house is not in order after a bill has been read through a third time.

Speaker Husted, Assembly Journal, 1890, p. 1120.

For the purpose of securing the attendance of Senators, a call of the Senate may be ordered at any time, but such call shall not be in order after the voting on any question has begun, nor after the third reading of a bill has been completed, nor after the motion to close debate has been ordered pursuant to Rule 33, unless it shall appear upon an actual count by the President that a quorum is not present.

Senate Rules, 1909, rule No. 47.

For the purpose of securing the attendance of members, a call of the house may be made, but such call shall not be in order after the main question has been ordered, nor after the voting on any question has commenced, nor after the third reading of a bill has been completed. Assembly Rules, 1898, rule No. 42.

A member absent without leave is in contempt and can be punished as the house may direct.

Croswell, p. 52.
Rule 36.

When no quorum is present "a call of the house" can be ordered and compel the attendance of absent members. After the call is ordered, a motion to adjourn, or to dispense with further proceedings in the call, cannot be entertained until a quorum is present, or until the sergeant-at-arms reports that in his opinion no quorum can be obtained on that day. Roberts, p. 182.

The uniform practice of the Legislature has recognized the right at any time, during a "call of the house," to move to adjourn, or to suspend further proceedings under the call.

COMMITTEES.—*Powers and Duties of.*— Unless the time and place for the meeting of a committee have been specifically expressed by the body appointing it, these matters are left to the discretion of the committee, which, without such instructions, may meet at such time and place as to the majority shall seem most expedient and convenient. But a quorum of the committee must meet formally to transact any business; the opinions of the members cannot be taken by the chairman separately, from which opinions he is to make up his report. Everything agreed upon must have been submitted in committee, and an opportunity given for free discussion.

Lt.-Gov. Jones, Senate Journal, 1888, p. 1021.

Business is transacted in a committee with less formality than in the deliberate body from which it emanates. The members are permitted to speak as often as they please, and are not required to stand when addressing the chair. But all rules which govern motions and questions in deliberative bodies are equally applicable to committees.

Mackey's Parliamentary Law, p. 180.

— *Reconsideration of votes in.*— A reconsideration of a vote is allowed, regardless of the time elapsed, only when every member who voted with the majority is present when the consideration is moved. Roberts, p. 70.

Minority of a committee has no right to make a report, but can only express its views by dissenting from the report of the majority.

Speaker Fish, Assembly Journal, 1896, p. 1390.
Lt.-Gov. Woodruff, Senate Journal, 1898, p. 230.

Motion to discharge a committee from further consideration is in order under the order of business of "reports of committees."

Speaker O'Grady, Assembly Journal, 1897, p. 959.

Can also be made under order of business of "motions and resolutions."

Cannot be made until after the committee has had an opportunity to consider the matter referred to it.

Speaker Cole, Assembly Journal, 1888, p. 1773.

COMMITTEE OF THE WHOLE.— Same rules to be observed, as far as applicable, as in the house.

Senate Rule 17.

Like other committees, deriving its authority solely from the resolutions and votes of the house, is in like manner confined within the powers delegated to it, and

cannot consider any other matters than those which have been regularly committed to it.
Cushing, par. 1996.

Cannot entertain any matter of privilege, or order any question pending therein to be taken by ayes and nays. Cushing, par. 2000.

The parliamentary rule that committees shall consider *no subjects* that they are not specially ordered to consider, applies to the committee of the whole, as well as to the special, select or standing committees.
Warrington, par. 154.

Cannot punish disorderly conduct, but must report it to the house for its animadversion. Mell, par. 219.

In case any sudden disorder occurs in, the speaker may resume the chair without form.
Cushing, pars. 1984–1985.

After disturbance is quelled chairman resumes his seat.
If dissolved for want of a quorum, the house may, as soon as a quorum is obtained, again proceed.
Cushing, par. 1995.

Has no power to appoint a sub-committee.
Cushing, par. 1919.

Nor to entertain a question of priority.
Cushing, par. 2009.
Croswell, p. 65.

If the enacting clause of a bill is stricken out in, it must be immediately reported. Croswell, p. 65.

A motion to rise and report a bill (except to progress), is not in order until each section and the title

have been considered. Like a motion to strike out enacting clause, it presents the opportunity for free discussion of the bill. Croswell, p. 65.

A section having been read and passed, cannot be returned to, to amend, until all the sections have been read.

Amendments proposed by, may be amended or rejected by the house, and matters stricken out by the committee may be restored by the house. Mell, p. 81.

No motion for previous question, or to adjourn, nor to lie on the table, nor to reconsider, can be entertained.
Barclay's Digest, p. 72.
Congressional Manual, 1898, p. 344.

The practice now followed by the Senate is to entertain the motion to reconsider.

— *Striking out in.*— If, in committee of the whole, an amendment is adopted, and subsequently the paragraph as amended is struck out, the amendment striking out is the only one to be reported to the house, and if the latter is voted down in the house, the first amendment is not thereby revived. Barclay's Digest, p. 11.

— *Granting leave.*— Should the committee not have completed the business before it rises, the chairman will report progress and ask leave to sit again. If leave be refused, the effect is to bring up the subject immediately before the assembly. Mell, par. 223.

Should the committee not have completed the consideration of a bill, and report progress thereon, and leave to sit again be granted, any amendments made to the bill, during its consideration, fall and the bill must be considered in the same shape in which it was when its consideration began.

— *Progress*, report of, does not include any amendments made in the committee, but leaves the bill in the same form as when moved.

JOURNAL.— *Expunging portions of.*— Now, it has sometimes been supposed that if any business has been transacted at the previous meeting of which the minutes purport to be a record, which it is desired to rescind or repeal, the proper method will be to propose an alteration of the minutes before confirmation, by which all reference to such business will be stricken out. But this evidently is an erroneous interpretation of the law, which proceeds from a misunderstanding of the true character of the minutes.

The minutes of a body are supposed to be, and ought always to be, "a just and true record of all things proper to be written." They constitute the journal of the proceedings of the meeting to which they refer, as those proceedings actually occurred. If altered by the expurgation of any part, they cease to be a record.

It has occurred in the proceedings of the English parliament and the American congress that portions of the journal which contained the record of transactions which had become obnoxious, have been expunged by a vote taken subsequent to their confirmation; and these precedents, it is supposed, would authorize a body to rescind or annul, or even to expunge from its minutes any particular portion.

But the question on so rescinding, annulling, or expunging must be made after the minutes have been approved. The first question, and the only question in order after the minutes have been read is, "Shall the minutes stand approved?" And the alterations or amendments to be suggested before this question is put, are not to change the record of what has really occurred, but to make the record just and true.

The decision has been made in congress that "when a member's vote is *incorrectly* recorded, it is his right on the next day, while the journal is before the house for its approval, to have the journal corrected accordingly. But it is not in order to change a *correct record* of a vote given under a misapprehension."

Mackey's Parliamentary Law, pp. 228, 229, 230.

The approval of the journal is the transaction of business, a proceeding which affects the regularity and validity of the proceedings of the previous day. The question as to whether or not the proceedings of the house are correctly recorded is a matter under the control of the house itself. Congressional Manual, 1898, p. 420.

Nothing is in order until after the journal has been read. Lt.-Gov. Jones, Senate Journal, 1889, p. 223.

MOTIONS.— Adjourned to a day certain is debatable and amendable by naming another day.
Croswell, p. 48.
Cushing's Law and P., par. 1523.

Commit, not amendable.
Speaker Husted, Assembly Journal, 1890, p. 762.

Postpone indefinitely, not amendable. Cros. 40.

Postpone indefinitely is already in its simplest form and is not amendable. Cushing, par. 1523.

When one of the privileged motions is made, none of those which stand behind can be made.
Cushing, par. 1525.

Indefinite postponement suppresses the subject during the session. Cushing, par. 1386.
Roberts, R. O., 160, 59.

Strike out and insert shall be indivisible.
Reed's Rules, p. 101.

A motion to lay on the table being decided in the affirmative, the principal motion, together with all the other motions, subsidiary and incidental, connected with it, is removed from the assembly until it is again taken up. Cushing, pars. 1449–1524.
Mell, p. 37.

When taken from the table it revives and stands in the exact form and with all the appendages pertaining to it at the time the motion to lie on the table prevailed.
Mell, p. 37.

A motion to lay on the table, if carried, carries with it the subject-matter before the house, but a motion to table an appeal from the decision of the chair upon a point of order carries only the appeal.
Speaker Malby, Assembly Journal, 1894, p. 2678.

A maker of a motion, though he can vote against it, cannot speak against his own motion. Roberts, p. 84.

Motion is not in possession of the house until it has been stated by the presiding officer.
Lt.-Gov. Woodruff, Senate Journal, 1898, p. 1357.
Motion can be changed or modified by its introducer at any time before the house has taken such action upon it as places it within the control of the house and beyond the control of the introducer.
Congressional Manual, 1898, p. 451.

Summary of Motions:
A motion to adjourn is not debatable.
A motion to fix the time to which to adjourn is not debatable if made when another question is before the assembly, and takes precedence of the motion to adjourn.
An amendment to an amendment cannot be amended.
The rules cannot be amended only on one day's notice being given, except by report of committee on rules, which is adopted by a majority vote.
An appeal relating to indecorum is not debatable, cannot be amended and is in order when another has the floor.
An appeal in all other cases cannot be amended and is in order when another has the floor.
A call to order is not debatable, cannot be amended and is in order when another has the floor.

A motion to extend the limits of debate is not debatable.

Leave to continue speaking after indecorum is not debatable and cannot be amended.

A motion to lie on the table is not debatable and cannot be amended.

A motion to postpone to a certain time admits of but limited debate, only on postponement.

A motion to postpone indefinitely opens the main question, but cannot be amended.

A motion for the previous question is not debatable and cannot be amended.

A resolution relating to priority of business is not debatable.

A motion to reconsider a debatable question opens the main question, cannot be amended nor reconsidered.

A motion to reconsider an undebatable question is not debatable, cannot be amended nor reconsidered.

A motion to rise in committee of the whole is not debatable and cannot be amended nor reconsidered.

A motion to make, postpone or rescind a special order requires a two-thirds vote.

A motion to suspend the rules requires a majority vote, and is not debatable nor amendable, cannot be laid on the table nor postponed indefinitely, nor can the motion to suspend be reconsidered.

A motion to suspend the rules after notice has been given requires a majority vote of all the senators elected.

Lt.-Gov. Saxton, Senate Journal, 1896, p. 551.

A motion to take from the table is neither debatable nor amendable.

A motion to take up a question out of its proper order requires a two-thirds vote.

A motion to suspend the rules can be made either under the order of business in which the matter proposed to be advanced stands, or under the head of motions and resolutions.

Speaker Cole, Legislative Record, 1888, p. 500.

Motion to suspend order of business can only be made under the order of motions and resolutions.

Lt.-Gov. Woodruff, Senate Journal, 1897, p. 1325.

Motion to recall a bill from the Governor is not debatable. Speaker Cole, Assembly Journal, 1889, p. 1552.

Motion to recall a bill from the Governor, being a privileged motion, can only be made by the member who introduced the bill, except under the head of motions and resolutions.

Speaker Bush, Assembly Journal, 1892, p. 682.

NOTICE OF MOTION.— A notice of motion can be given under the order of motions and resolutions, or under the order of business in which the matter affected by the resolution stands.

ORDER IN DEBATE.— It is a breach of order to speak impertinently or beside the question superfluously or tediously. To reflect on any determination or proceeding of the house, unless with a view to or in support of a motion to rescind. To allude to a member by name or to indulge in personalities by arraigning a member's motives in his official course, or to allude to what has been said in the other house, or to the particular votes or majorities given on any measure there, or to speak disrespectfully of the other branch. Croswell, p. 34.

ORDER.— *Questions of.*— Questions of order may be of two kinds: *First*, those that relate to general principles; and, *second*, those that have a personal bearing. As an example of the first may be given, the question raised whether, on the motion to indefinitely postpone, it will be in order to discuss the merits of the main proposition; as an example of the second, the case when one raises the point as to whether the remarks of a member are not irrelevant and violative of order. In the first

case, debate on the point of order is admissible; in the second, it is out of order. It is worthy of special note that all questions of order of a personal character, whether on an appeal from the decision of the chair or not, are to be decided without debate. Mell, par. 154.

The presiding officer may speak on points of order in preference to other members, and he decides all questions of order subject to appeal, and no other business is in order till the question on the appeal has been decided. Warrington, p. 5.

When a question of order arises in the course of any other proceeding it supersedes the further consideration of the subject out of which it arises until that question is disposed of. Cushing, par. 1459.

It is irregular to raise one point of order on another, so that there may be two questions of order pending at once. Cushing, par. 1463.

ORDER OF BUSINESS.— When gone through with can only be resumed by unanimous consent.
Lt.-Gov. Saxton, Senate Journal, 1896, p. 386.

— Motion to suspend can only be made in order of motions and resolutions.
Lt.-Gov. Woodruff, Senate Journal, 1897, p. 1325.

POSTPONEMENT.— *To a time definite.*— On a motion to postpone to a time definite, it is not in order to speak to the merits of the question thus proposed to be postponed. It will not be out of order, though, to speak strictly to the proposition to postpone, and to show why one time is preferred to another. The chair should hold speakers rigidly to these points. In congress, *all* debate is interdicted. Mell, par. 93.

This motion is sometimes abusively made by designating a day known to be beyond the session. It be-

comes then a motion to suppress, and should be treated by the chair as though it had been a motion for indefinite postponement. Mell, par. 94.

— *Indefinite.*— The motion for indefinite postponement lays open the whole question for discussion, on the principle that whatever motion proposes to make a final disposition of a question brings up for discussion all its merits. Nor is even the previous question an exception to this. That, if sustained, does not make a final disposition of the pending proposition; for it compels a direct vote subsequently for or against the main question. To lie on the table, and to postpone to a time definite, are not debatable, because they only temporarily defer measures. Debate, therefore, may be withheld until they come again before the assembly in order.
Mell, par. 110.

The motion to indefinitely postpone cannot be amended. It has been held by some writers in parliamentary law that it can be amended by striking out the word "indefinitely," and inserting a definite day; but this is, by amendment, to transform one form of a question into another, which is clearly inadmissible. "A motion to suppress" cannot be, by amendment, transformed into "a motion to defer." Mell, par. 111.

When a motion to indefinitely postpone prevails, the proposition so postponed cannot be renewed during the session. Mell, par. 112.

PREVIOUS QUESTION.— When a bill, having been engrossed and read a third time, is before the house for consideration, the main question is on its passage.
Const., art. 3, sec. 15.

The motion for the previous question may be made to suppress any other original motion, but it cannot be put

upon an amendment or any of the merely subsidiary motions, as to commit or postpone.
Cushing, pars. 1414–1415.

When ordered, the main question must be put immediately without debate, amendment or delay.
Cushing, par. 1418

Again, "must be put without any further debate, alteration or delay." Cushing, par. 1424.

A motion to adjourn is not in order when the main question is ordered. Croswell, p. 48.

A motion may be withdrawn after the previous question is ordered, provided it has not been amended, or provided that no amendment has been moved to it, so as to take it out of the control of the mover.
Warrington, p. 36.

Motions to commit or postpone are cut off when the previous question is ordered. Warrington, p. 57.
See page 513.

PRIVILEGE.— *Question of.*— Which supersede all others for the time being, except that of adjournment, are those which concern the rights and privileges of the assembly, or of its individual members, as for example, when the proceedings of the assembly are disturbed or interrupted, whether by strangers or members, or where a quarrel arises between two members, and in these cases requiring immediate action, it can interrupt a member's speech.
Cushing, p. 81.
Roberts, p. 34.

Any matter of privilege, affecting the assembly itself, or any of its members, of which the assembly ought to have instant information.

In such cases a member interrupted when speaking is obliged to yield the floor. Cushing, par. 1499.

A question of privilege is always in order. Whenever a member rises and says: "I rise to a question of privilege," the question must first be stated. The presiding officer will decide whether it is or is not such a question. If he decides that it is, then the consideration of any other business whatsoever, that may at that time be before the body must be suspended until the question of privilege is disposed of. And this disposition of the question may be either by entertaining it at once, and deciding it on its merits, or by any other of the modes of disposition to which any other question is subject. It may be ordered to lie on the table, be postponed definitely or indefinitely, or be committed for investigation and report to a committee. In the last case the character of a question of privilege adheres to the report, the presentation of which will always be in order, and will take precedence of all other business. But it does not follow that the immediate consideration of, and final action on the report must be had, for the report, like the question to which it refers, is subject to the operation of any of the subsidiary motions, and may, like any other report, be laid on the table, postponed or recommitted.

Questions of privilege, it must be remembered, are entitled to presentation at any time, for in this consists their privilege; but that privilege does not extend to their consideration. Having been once presented they become, as to the time and manner of their consideration, subject to the rules which affect all other questions.

Mackey's Parliamentary Law, p. 137.

When questions of privilege arise that are admissible to be entertained during the discussion of a question,

they supersede the question pending at the time, together with all subsidiary or incidental ones, and must be first disposed of. Cushing, pars. 1500, 1501.

— *Personal explanation not a.*— A personal explanation is not a matter of privilege. It can be made only by leave of the assembly implied or expressed.
Roberts, p. 168.

— *Previous question applies to.*— The previous question applies to a question of privilege equally with any other question. Barclay's Digest, p. 173.

Privileged questions.— In the Senate are as follows, and have precedence in the order stated, viz.: 1. For an adjournment. 2. For a call of the Senate. 3. To lay on the table. 4. To postpone indefinitely. 5. To postpone to a certain day. 6. To commit to a standing committee. 7. To commit to a special committee. 8. To commit to the committee of the whole. 9. To amend. In the Assembly, these motions are: 1. To adjourn. 2. A call of the House. 3. For the previous question. 4. To lay on the table. 5. To postpone to a day certain. 6. To commit. 7. To amend. 8. To postpone indefinitely. See also Senate Rule 1, page 301. See page 576

PROGRESS.—A motion that the committee of the whole arise and report progress upon a bill is in order at any time, and shall be decided without debate.

A report of progress on a bill does not include any amendments made in the committee, but leaves the bill in the same form as when moved.

QUESTION.— *When divisible.*— Jefferson says: "A question to be divisible must comprehend points so distinct and entire, that one of them being taken away the other may stand." Warrington, p. 49.

If a motion be made to insert or strike out a section, then a motion to amend it; the motion to amend must be first put. Warrington, p. 26.

—*Division of.*—A division of the question is not in order on a motion to commit with instructions, or on the different branches of instructions.

A motion to strike out and insert is not divisible. Reed's Rules, p. 101.

QUORUM.—No subject of parliamentary law has attracted such wide attention in recent years as that of quorum, and the various rulings thereon. Section 10 of article 3 of the Constitution of the State of New York provides that a majority of each house shall constitute a quorum to do business, and section 20 of the same article provides that all bills appropriating the public moneys or property for local or private purposes shall receive the assent of two-thirds of all the members elected, and section 25 of the same article further provides that on the final passage, in either house of the Legislature, of any act which imposes, continues or revives a tax, or creates a debt or charge, or makes, continues or revives any appropriation of public or trust money or property, or releases, discharges or commutes any claim or demand of the State, the question shall be taken by yeas and nays, which shall be duly entered upon the journals, and three-fifths of all the members elected to either house shall, in all such cases, be necessary to constitute a quorum therein.

It was under the provisions of section 25 that Lieut.-Governor Hill held (Senate Journal, 1883, p. 360) that the constitutional requirements therein set forth were entirely satisfied by the presence of members even if they did not vote, and accordingly he directed the Clerk of the Senate to put down the names of certain Senators as present and not voting, and in so ruling the Chair stated "The parliamentary question presented is

whether this bill has been duly passed. It has received the votes of a majority of all the Senators elected to the Senate. It has received all the affirmative votes which the Constitution requires to pass such a bill. The section does not provide that three-fifths of all the Senators elected shall vote for the bill or that such a number shall vote at all upon the bill, but simply that such a number shall be present in order to constitute a quorum. The presence or absence of Senators is a physical fact known to the President and Clerk. It requires only the exercise of their senses to determine the question. If a Senator is in fact present, his refusal to vote, which is a violation of his duty, does not make him absent in a parliamentary sense. He can be counted by the President and Clerk as one of three-fifths necessary to constitute a quorum. The President of the Senate is required to certify as to the passage of all bills, and to certify the fact whether they are passed by the required number and with a constitutional quorum present. He may obtain that information as to the number of Senators who are present either from his own observation or from the tally list if that shows it, or from the journal. He is bound to know and certify whether there was present the requisite quorum, and as his certificate is the evidence of such fact, the question presented is peculiarly in his own province."

The substance of this ruling was made by Mr. Speaker Reed in the Fifty-first Congress, and was later declared constitutional by the United States Supreme Court in the case of the *United States* v. *Ballin*, 114 U. S. Sup. Ct. Rep. 1. These rulings and decisions were followed by Lieut.-Govs. Jones, Sheehan and Saxton, and are now accepted without question. Senate Rule 34 of the Rules of 1902, expressly provides this method of ascertaining a quorum.

A quorum is presumed to be present, if no member raises the question. The method of securing a quorum is fully set forth under the heading "Call of the House."

RECESS.— *When not in order.*— Pending a motion to suspend the rules, so as to take an immediate vote on a proposition, a motion for a recess is not in order.

Barclay's Digest, p. 207.

Pending a call of the house a motion for a recess is not in order.

RECONSIDERATION.— *The right to move a.*— Where a vote is not taken by ayes and nays, and consequently no record made of each member's vote, it is the well-settled practice to permit *any* member to move a reconsideration.

— *When in order.*— It is in order *at any time*, even when a member is on the floor, or the highest privileged question is pending, on the same or succeeding day, to move a reconsideration, and have it entered, but it cannot be taken up and considered while another question is before the house.

— *If papers are out of the house.*— A motion to reconsider, if made in time, may be entertained, notwithstanding the papers connected with the original proposition have gone out of the possession of the house.

It is not in order to move a reconsideration of a vote sustaining a decision of the chair, after subsequent action has resulted from such decision which it is impossible for the house to reverse.

Where a motion to reconsider has been once put and decided, it is not in order to repeat the motion.

A motion to reconsider a vote laying a motion to reconsider on the table, is not in order.

Barclay's Digest, p. 198.
Roberts, p. 62.

Motion to reconsider can be made by any member regardless of how he voted upon the question sought to be reconsidered.

Speaker O'Grady, Assembly Journal, 1897, p. 2789.

—*Cannot reconsider:*
A motion to lay on the table.
A motion to take from the table.
A motion to adjourn.
Warrington, p. 45.
Senate and Assembly Rules, 1898.

A motion to suspend the rules for a particular purpose, when lost cannot be reconsidered.
Cushing, p. 487.

Held that such motion could be reconsidered.
Lt.-Gov. Saxton, Senate Journal, 1896, p. 551.
Lt.-Gov. Woodruff, Senate Journal, 1902.

A motion for the previous question.
Assembly Rules, 1898, Rule No. 34.

A motion to reconsider is not amendable.
Previous question may be moved to suppress any other original motion, but not on an amendment, on any other merely subsidiary motion, as to commit or postpone.
Cushing, p. 556.

When the previous question is moved on the motion to reconsider the previous question applies only to that.
Warrington, p. 36.

REPORT.—*Minority.*—It sometimes happens that one or more members of a committee will dissent from the views of the majority, and that they will naturally desire to express their antagonistic opinions in a written paper. This paper is usually called a "minority report." But the term is an inaccurate one, since the decision of parliamentary law is, that the minority of a committee cannot make a report, a minority not being a committee. Such reports are not known in the British parliament, but in congress, by a courtesy of the house, they are on motion received with the report of the

majority and are printed, postponed, or considered in the same manner. Their effect seems to be to serve as a basis for amendments to be moved in the resolutions proposed by the majority. It has been usual, although not strictly parliamentary, in popular assemblies, when there are two reports, to move that the report of the minority be adopted. Such a motion is only admissible on the ground that it is to be viewed as a motion for a substitute, by way of amendment to the report of the majority. If such a motion is adopted, its effect is the change of the character of the majority report, and the adoption of the report as so amended. But at this stage a motion might be made to lie on the table, to commit, or to postpone. In a word, the report of a minority can only be treated as any other amendment to that of the majority.

Mackey's Parliamentary Law, pp. 190 and 191.

Minority of a committee has no right to make a report, but can only express its views by dissenting from the report of the majority.

Speaker Fish, Assembly Journal, 1896, p. 1390.

The common practice is to permit the minority to submit their views in writing, which are usually considered with the majority report. When such views are accompanied by a resolution or bill, such resolution or bill is not thereby brought before the house for its action, but must be submitted by some member.

Congressional Manual, 1838, p. 337.
So held by Lt.-Gov. Woodruff, Senate Journal, 1898, p. 240.

One more observation is necessary. The report of the minority does not, I think, so adhere, in parliamentary phrase, to that of the majority, that a vote to lay the former on the table would carry the latter with it. It is one of the exceptions to the general rule, that what-

ever adheres to the subject of a motion goes to the table with it.

Mackey's Parliamentary Law, pp. 190 and 191.
Speaker Fish, Assembly Journal, 1896, p. 1390.
Lt.-Gov. Woodruff, Senate Journal, 1898, p. 230.

RULES.— *To suspend.*— If a motion to suspend the rules for a particular purpose is decided in the negative, there can be no reconsideration of the vote, nor is any second motion to suspend the rules for the same purpose in order on the same day unless the motion is varied in its terms, or is for a different time, or unless some intervening business takes place; but a second suspension for the same purpose is in order on a different day, and a vote to suspend the rules may be reconsidered.

Cushing, p. 1487.

The practice in the Senate is in contradiction of the foregoing.

See Senate Journal, 1896, p. 551.

A motion to suspend the rules is not debatable.

Mell, par. 163.

A motion to suspend the rule can be made either under the order of business in which the matter proposed to be advanced stands, or under the head of motions and resolutions.

Speaker Cole, Legislative Record, 1888, p. 500.

SPECIAL ORDERS.— To make a special order requires a two-thirds vote. The same to postpone and rescind.

Roberts, p. 97.

When there are two special orders for the same day, the first must be disposed of before the second is taken up.

Warrington, p. 72.

SPECIAL SESSIONS.— When the house is in special

session for a special purpose no other business is in order, even by unanimous consent.

This principle is recognized in the Constitution, article 4, section 4, which reads: At extraordinary sessions no subject shall be acted upon, except such as the governor may recommend for consideration.

TABLE.— *Negative and affirmative vote to lie on the.* — A negative vote on a motion to lie on the table may be reconsidered.

If a motion to reconsider be laid on the table, the latter vote cannot be reconsidered.

Barclay's Digest, p. 134.

VOTES.— *Change of.*— In a legislative body no member is allowed, under any circumstance, to vote or change his vote after the result is announced by the chair. Under such circumstances, a member, if he desires to have his opinion known, may, if allowed, have a statement put upon the journal as to the way he would have voted. Warrington, p. 25.

— *Tie.*— When there is a tie vote the motion fails unless the chair gives his vote in the affirmative. Where his vote will make a tie, he can cast it, and thus defeat the measure. Roberts, p. 94.

EXPLANATION OF TABLE.

This table is intended to answer the question in the vertical column during the pendency of the motion in the horizontal column, *e. g.:* Amend. Amend (can you amend an amendment)? Yes. Adjourn. Amend (can you amend a motion to adjourn)? No, etc.

The x means yes; the o, no. The figures refer to the foot notes: (The Reviser is indebted to Hon. Thomas B. Reed and Messrs. Rand, McNally & Co., his publishers, for permission to use the following table, with such changes as were made necessary by difference in procedure in the House of Representatives and the Legislature.)

	Amend.	Commit.	Debatable.	Division of question.	Postpone to day certain.	Postpone indefinitely.	Previous question.	Reconsideration.
Adjourn	O	O	O	O	O	O	O	O
Adjourn, to fix time to which	X	O	X	O	O	O	O	X
Amend	X	X	X[1]	X	O	O	O	X
Appeal	O	O	O	O	O	O	O	O
Call of the House	O	O	O	O	O	O	O	X
Commit to Committee of the Whole	X	O	O	O	O	O	O	X
Commit to a Select Committee	X	O	O	O	O	O	O	X
Commit to a Standing Committee	X	O	O	O	O	O	O	X
Division of question	X	O	O	O	O	O	O	O[4]
Lay on table	O	O	O	O	O	O	O	X
Postpone to a day certain	X	O	X[2]	O	O	O	O	X
Postpone indefinitely	O	O	X[3]	O	O	O	O	O
Previous question	O	O	O	O	O	O	O	O
Recess	X	O	X	O	O	O	O	O
Rules, suspension of	O	O	O	O	O	O	O	O

MODIFICATIONS.

1. But a motion to lay an appeal on the table will cut off debate, and if carried will sustain the chair.
2. Does not open the main question to discussion.
3. Opens main question to discussion, because decision in the affirmative is a final negative to the whole proposition.
4. A negative vote to lay on the table may be reconsidered.